UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

THE CITY OF HIALEAH EMPLOYEES' RETIREMENT SYSTEM and LABORERS PENSION TRUST FUNDS FOR NORTHERN CALIFORNIA, On Behalf of Themselves and All Others Similarly Situated, **Plaintiffs,** **v.** **TOLL BROTHERS, INC., BRUCE E. TOLL, ROBERT I. TOLL, ZVI BARZILAY, ROBERT S. BLANK, JOEL H. RASSMAN, RICHARD BRAEMER, PAUL E. SHAPIRO, CARL B. MARBACH and JOSEPH R. SICREE,** **Defendants.**	**Civ. Action No. 07-1513**

DECLARATION OF PROFESSOR MICHAEL R. GIBBONS

June 15, 2010

I. Introduction

1. I am the I.W. Burnham II Professor of Investment Banking at the Wharton School of the University of Pennsylvania, where I served as Chairman of the Department of Finance from 1994 to 2006. I am currently the Deputy Dean of the Wharton School; the role of the Deputy Dean can be best described as the chief academic officer of the school. Prior to joining the faculty of the University of Pennsylvania, I taught at Stanford University and the University of Chicago. I received my masters and doctorate in economics from the University of Chicago. My academic work has been in the fields of valuation of financial securities (including complex debt securities and equity), portfolio and risk management, and econometrics. I have taught courses on valuation, fixed income securities, financial derivatives, investment management, econometrics, empirical methods in finance, and other subjects. In particular, I have taught advanced topics on econometrics and empirical methods in finance (including the methodology of conducting an event study) to doctoral students. I have served as a reviewer (both as a referee and an editor) of academic manuscripts. I have published numerous articles on economic and financial topics. A copy of my *curriculum vitae*, which includes a list of my publications, is attached as Exhibit 1, and a list of cases in which I have testified as an expert at trial or by deposition during the past four years is attached as Exhibit 2.

2. I have been retained by counsel for Defendants to opine on whether the stock price of Toll Brothers, Inc. ("Toll Brothers") was artificially inflated by the alleged misrepresentations in the Amended Complaint between December 9, 2004 and November 8, 2005 (the "Alleged Class Period"), and whether purported "corrective disclosures" of the alleged misrepresentations in the Amended Complaint caused any declines in Toll

Brothers' stock price. I have also been asked to review and respond to the declaration submitted on May 14, 2010 by Plaintiffs' expert, Professor John Finnerty ("Finnerty Declaration").

3. To undertake my analysis, I have reviewed information from a number of sources as detailed in Exhibit 3. In addition, I have applied my knowledge and experience gained through my years of academic work.

4. I am being compensated for my work in this matter at my regular rate of $800 per hour. I have been assisted in connection with this matter by professionals from Cornerstone Research, Inc. ("Cornerstone"). I have been compensated by Cornerstone, a practice which existed prior to my retention by Toll Brothers in this matter. I understand that the payments I receive from Cornerstone are discretionary and based on, among other factors, services I provided to Cornerstone directly and the fees paid to Cornerstone in connection with matters on which we were mutually engaged during the period. I do not know to what extent any payments I have received or will receive from Cornerstone may be attributable to my work in this matter. As with the compensation I have received from Toll Brothers, I understand that those payments are in no way contingent or based on the content of my opinions or the outcome of this matter or any other matters for which I have been retained.

5. I reserve the right to revise or supplement this declaration if additional information, reports, data, or documents are reviewed, or if I am asked to perform further research or analysis.

II. Summary of Opinions

6. Plaintiffs allege that Toll Brothers' stock price was artificially inflated during the Alleged Class Period because Defendants issued false and misleading statements that misrepresented Toll Brothers' earnings growth prospects for Fiscal Year ("FY") 2006 and FY 2007.[1,2,3] They claim that "Toll Brothers' actual outlook for F06 and F07 was not anywhere near the 20% net income growth defendants were publicly projecting at any time during the Class Period," and that the alleged misrepresentations were revealed in a set of purported disclosures made on August 4, August 25, October 3, and November 8, 2005.[4]

7. I have extensive experience analyzing stock price movements and the reasons for those movements, including in the context of litigation. In my experience, this often involves statistical analyses of the type that Professor Finnerty purportedly performs in his declaration and that I discuss in Appendices A and B of this declaration. However, because of the specific facts of this case, no such analysis is required to determine whether or not Toll Brothers' stock price moved as a result of Plaintiffs' central alleged misrepresentation (i.e., the FY 2006 net income growth guidance of 20% that Toll Brothers provided during the Alleged Class Period) and purported corrective disclosures

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[1] Amended Complaint, ¶ 26. Memorandum of Law in Support of Lead Plaintiffs' Motion for Class Certification submitted on May 14, 2010 ("Plaintiffs' Class Certification Memorandum"), p. 7.

[2] While the Amended Complaint also includes alleged misrepresentations regarding new active selling communities, demand for Toll Brothers' homes, traffic, contracts, home deliveries and price increases, by Plaintiffs' own admission, these alleged misrepresentations were relevant only to the extent that they supported the company's FY 2006 and FY 2007 net income guidance. (Amended Complaint, ¶¶ 3, 5, 26, 55, 68, 92, 129. Plaintiffs' Class Certification Memorandum, pp. 7-9.)

[3] Toll Brothers' fiscal year ends on October 31. For example, FY 2005 ended on October 31, 2005.

[4] Amended Complaint, ¶ 26. Plaintiffs' Class Certification Memorandum, pp. 7-9. Finnerty Declaration, ¶ 102.

of that alleged misrepresentation. All one needs to understand to make that determination is the following:

a. Based on a straight-forward economic comparison, the FY 2006 net income guidance Toll Brothers provided during the Alleged Class Period was, in dollar terms, at all times below or within the FY 2006 net income guidance provided on December 8, 2005, one month after the end of the Alleged Class Period.

b. In addition, the FY 2006 net income guidance Toll Brothers provided during the Alleged Class Period was, in dollar terms, at all times below market expectations (as measured by the analyst consensus FY 2006 net income estimate) at the close of the Alleged Class Period.

c. Professor Finnerty devotes 30 pages of his 45-page declaration to performing several analyses to determine if Toll Brothers stock traded in an efficient market during the Alleged Class Period and opining that the stock did in fact trade efficiently.[5] However, he does not perform, and testified that he has not performed,[6] either of the straight-forward economic comparisons discussed above. He does not even address, and

[5] Finnerty Declaration, pp. 5-35.

[6] "Q. Have you calculated the dollar amount of fiscal year 2006 net income that was implied by Toll Brothers' guidance at different points through the class period? A. No, I have not." Deposition of John D. Finnerty, May 27, 2010 ("Finnerty Deposition"), at 175:2-6; "Q. The next date when Toll Brothers increased the guidance for 2006 was August 10, 2005. As we discussed earlier on that date, Toll Brothers was projecting 2006 net income of 883.68 million, is that correct? A. Yes. Q. Does it surprise you to learn on September 15, 2005, I/B/E/S/ reported a mean analyst net income estimate of 983.9 million for Toll Brothers in 2006? A. That does surprise me, it would be that high and the difference would be that high, that does surprise me. Q. Did you consider that as part of your analysis in this case? A. I did not." Finnerty Deposition, at 191:8-24.

testified he was not asked to address,[7] whether Toll Brothers' stock price was artificially inflated by the company's FY 2006 net income guidance during the Alleged Class Period. Nor does he make any effort to isolate the effect on the company's stock price of the purported corrective disclosures of the company's FY 2006 net income guidance that are alleged in the Amended Complaint. In fact, he testified that "it would be virtually impossible" to do so.[8] Instead, he performs a purported analysis of the stock movements resulting from the totality of the news announcements on the alleged corrective disclosure dates.[9] Thus, he fails to determine whether the purported corrective disclosures of the company's FY 2006 guidance caused any declines in its stock price.

8. Each of these conclusions independently, and certainly in conjunction with one another, leads me to opine that neither Plaintiffs nor Professor Finnerty can establish either that Toll Brothers' stock price was artificially inflated by the alleged

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[7] "Q. Plaintiff's counsel did not ask you to opine on whether any of the alleged misrepresentations in the amended complaint caused statistically significant movement in Toll Brothers' stock price on the day those statements were made, correct? A. That's correct." Finnerty Deposition, at 103:6-12.

[8] "Q. Is it your opinion that Toll Brothers' stock price declined [*sic*] on October 3, 2005 is attributable, in part, to the October 2nd New York Times article? A. Could be. There is also the interview with Ron Insana, so I haven't tr[ied] to parse out the impact between the New York Times article and the interview with Insana and all the analysts who reacted to both of those items of information, but it's part of the mix. Q. You haven't tried to determine whether any of these particular pieces were corrective, rather than just negative, correct? A. I think they're part, in my view, part of the corrective mix. What I haven't tried to do is figure out what part of the impact that I measured is directly attributable to each of those separately. I think it's part of the mix. When I'm interpreting a corrective disclosure and measuring the impact, I'm taking the corrective information as a body of information, I'm not trying to separate out its impact of individual items. Q. Could do you that if you were asked to? A. I think with that number of announcements, I think it would be virtually impossible because the only way one can really separate it is by being able to distinguish separate impacts, in other words, one would have to see an announcement, get enough of a time period to measure the impact before the next one occurs and given the large number, I'm not sure it would be feasible to do that." Finnerty Deposition, at 168:18-170:7.

[9] "Q. You're not offering an opinion on whether any particular piece of information was corrective, is that correct? … A. I'm not…. Q. When you say you're not rendering an opinion on whether or not specific items caused the decline, does that mean you haven't tried to determine whether any particular piece of news caused the decline, is that correct? A. That's correct…." Finnerty Deposition, at 166:14-167:11.

misrepresentations in the Amended Complaint during the Alleged Class Period or that purported "corrective disclosures" of the alleged misrepresentations in the Amended Complaint caused any declines in Toll Brothers' stock price. Instead, to the extent there was any artificial inflation in Toll Brothers' stock price during the Alleged Class Period, it was likely caused not by company guidance, but by analyst expectations that were far in excess of company guidance.

9. Below I explain in detail the bases for my conclusions. Appendix A provides a detailed analysis of the days on which Plaintiffs allege in the Amended Complaint that Defendants made misrepresentations regarding Toll Brothers' growth prospects. A detailed analysis of the purported corrective disclosures in the Amended Complaint is presented in Appendix B. I note that, as discussed above, the analyses presented in Appendices A and B are not required to determine whether the alleged misrepresentations in the Amended Complaint caused any artificial inflation in Toll Brothers' stock price, or whether purported corrective disclosures of the alleged misrepresentations caused any declines in the stock price. Nevertheless, they independently support my conclusion that there is no evidence of either artificial inflation due to the alleged misrepresentations or stock price declines due to purported corrective disclosures of the alleged misrepresentations.

III. The FY 2006 Net Income Growth Guidance Toll Brothers Provided During the Alleged Class Period Was at All Times Below or Within the Net Income Guidance Provided on December 8, 2005

10. Plaintiffs claim in the Amended Complaint that Toll Brothers' FY 2006 and FY 2007 net income guidance was false and misleading throughout the Alleged Class

Period.[10] Toll Brothers provided FY 2007 net income guidance only towards the end of the Alleged Class Period (on August 4, 2005 and August 25, 2005), and in terms of growth from expected FY 2005 and FY 2006 net income. Thus, Plaintiffs' allegations in this case all proceed from Defendants' alleged misrepresentations of Toll Brothers' FY 2006 growth prospects during the Alleged Class Period.

11. In order to determine whether the alleged misrepresentations caused any artificial inflation in Toll Brothers' stock price and whether purported corrective disclosures of the alleged misrepresentations caused any declines in the stock price, one must first compare the FY 2006 net income guidance Toll Brothers provided during the Alleged Class Period to the FY 2006 net income guidance provided at the close of the Alleged Class Period. If the FY 2006 net income guidance provided throughout the Alleged Class Period was below or within the guidance provided at the close of the Alleged Class Period, then, as an economic matter, the guidance provided during the Alleged Class Period could not have caused any of the difference between Toll Brothers' stock price during the Alleged Class Period and the stock price at the close of the Alleged Class Period. Professor Finnerty fails to perform, and has conceded in his deposition that he has failed to perform,[11] this basic and crucial comparison between the FY 2006 net income guidance provided during the Alleged Class Period and the FY 2006 net income guidance provided at the close of the Alleged Class Period.

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[10] Amended Complaint, ¶¶ 3, 5, 26, 55, 68, 92, 129. Plaintiffs' Class Certification Memorandum, pp. 7-9. Finnerty Declaration, ¶ 102.

[11] "Q. Have you calculated the dollar amount of fiscal year 2006 net income that was implied by Toll Brothers' guidance at different points through the class period? A. No, I have not." Finnerty Deposition, at 175:2-6.

12. According to Plaintiffs, Defendants artificially inflated Toll Brothers' stock price by reaffirming the company's 20% net income growth guidance for FY 2006 throughout the Alleged Class Period.[12] Plaintiffs claim that the "truth" was revealed in a series of alleged corrective disclosures ending with the company's November 8, 2005 disclosure that it was going to provide an updated FY 2006 net income guidance on December 8, 2005. On December 8, 2005, Toll Brothers announced that it was projecting FY 2006 net income of $810 million to $890 million.[13] Plaintiffs do not allege, and Professor Finnerty testified that they do not allege,[14] that the guidance provided on December 8, 2005 was misrepresented.

13. In trying to figure out what Toll Brothers' shares were worth in dollar terms during the Alleged Class Period, investors would evaluate the company guidance in dollar terms. In other words, as Professor Finnerty agreed in his deposition,[15] they would convert any percentage net income growth guidance provided by the company into dollar

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[12] Amended Complaint, ¶ 2.

[13] "Toll Brothers' FY 2005 Net Income Rises 97 Percent to $806.1 Million," Toll Brothers Press Release, December 8, 2005.

[14] "Q. Plaintiffs don't allege that the company's December 8, 2005 forecast was false or misleading, do they? A. No, I don't believe they do." Finnerty Deposition, at 176:13-16.

[15] "Q. Professor Finnerty, when Toll Brothers issued forecasts of net income growth, during the class period, it did so in percentage terms, correct? A. Yes. Q. Would you agree that when investors heard, for example, that Toll Brothers was forecasting 40 percent growth in net income for 2005 and 20 percent growth for 2006, that investors were going to sit down and figure out what the shares were then worth as a result of that new information? A. Some would, I think the others would, the analysts would do that calculation and some investors, probably their internal analysts would[. T]hat would lead to new price targets and I think it's more likely the investors would react to that information rather than directly to the percentage increase. Q. More likely that they would react to the analyst's forecasts than the company's forecasts, is that correct? A. Yes, unless they did their own calculation, but I think most investors would wait for the analysts or have their internal analysts do that calculation and see what the earnings per share implied is, apply a reasonable multiple and figure out the new price target, many investors will wait for the securities analysts to do that knowing that is one of the key roles of the securities analysts, they will adjust their price targets as the company modifies its earnings forecasts. Q. Whether it's the company forecasts or the analyst forecasts, the investors are trying to figure out in real dollar terms what those percentages mean, is that correct? A. Trying to figure out what the shares are worth so they're trying to figure out what the percentages mean in terms of the value of shares, so if the share value has built into a 20 percent growth forecast that the company says they forecast, 20 percent growth[,] share price won't change, but if the investors are expecting 25 percent and the company said no, it's only going to be 20[,] share price will drop. Q. For an investor to make that determination, they have to figure out what, in real dollar terms, 20 percent or 25 percent means, is that correct? A. Yes, I think they do." Finnerty Deposition, at 172:20-174:25.

amounts.[16,17] Thus, percentage growth guidance would be relevant to investors' valuation of the company only insofar as it provided information on what the actual dollar amount of future net income was expected to be. The results of my analysis of the dollar amounts of the company's FY 2006 guidance are summarized in Table 1 below.

[16] This is consistent with the fact that, as Professor Finnerty indicates in his declaration, the value of a firm is equal to the discounted value of its expected future cash flows and investors thus evaluate a company based on its expected future cash flows. Finnerty Declaration, ¶ 98, quoting Damodaran, Aswath, *Investment Valuation: Tools and Techniques for Determining the Value of Any Asset*, 2nd ed., John Wiley & Sons, Inc., New York, 2002, p. 13. The starting point for calculating cash flows is net income, a method "used most widely in published financial statements." Emery, Douglas R., John D. Finnerty, and John D. Stowe, *Corporate Financial Management*, 3rd ed., Prentice Hall, Upper Saddle River, New Jersey, 2007, pp. 48-49, cited in Finnerty Declaration, FN 2.

[17] Consistent with this, for each of the days on which Toll Brothers increased its FY 2005 net income projection during the Alleged Class Period, the Amended Complaint discusses the dollar increase in FY 2006 net income. For example, Plaintiffs claim that the increase from 40% to 60% in Toll Brothers' FY 2005 net income growth projection on February 23, 2005 "would require Toll Brothers to achieve $131 million more in net income in F06 than in F05 (a 60% increase over F04 would bring F05 net income to $654.56 million, and 20% of that number is $131 million)." Amended Complaint, ¶ 68(e). See also ¶¶ 92(e) and 129(g).

Table 1

Toll Brothers, Inc.
FY 2006 Net Income Guidance

Source: Toll Brothers, Inc. Press Releases and Conference Calls
(Dollar Figures in Millions)

Earnings Announcement Date	Toll Brothers Guidance
After Alleged Class Period	
12/8/05	$810.00 – $890.00
Alleged Class Period	
12/9/04	$687.31
2/23/05	$785.49 [1]
5/10/05	$785.49
5/26/05	$834.59 [2]
8/4/05	$834.59
8/25/05	$883.68

Note:
[1] In the conference call following the 2/23/05 press release, Toll Brothers provided FY 2006 net income growth guidance of approximately 20%, with a range of 18% to 22%, or, in dollar terms, $772.40 million to $798.58 million.
[2] In the conference call following the 5/26/05 press release, Toll Brothers provided FY 2006 net income growth guidance of approximately 20%, with a range of 17% to 23%, or, in dollar terms, $813.72 million to $855.45 million.

14. As seen in Table 1, in dollar terms, the FY 2006 net income guidance Toll Brothers provided during the Alleged Class Period was at all times either below or within the FY 2006 net income guidance provided on December 8, 2005. Therefore, Plaintiffs cannot reasonably claim either that Defendants' FY 2006 net income guidance caused any inflation in Toll Brothers' stock price during the Alleged Class Period, or that the purported corrective disclosures of that guidance caused any stock price declines.

15. As mentioned above, on November 8, 2005, Toll Brothers announced it would provide an updated guidance on December 8, 2005. The updated FY 2006 net income guidance announced on December 8, 2005 was $810 to $890 million. These figures are reported in the first row of Table 1.

16. On December 9, 2004, the first day of the Alleged Class Period, Toll Brothers announced FY 2004 net income of $409.111 million.[18] At the time, the company expected FY 2005 net income to grow 40% from 2004, and FY 2006 net income to grow at least 20% from 2005.[19] The resulting FY 2006 net income guidance of $687.31 million is shown in the second row of Table 1. As Professor Finnerty conceded in his deposition,[20] this projection is clearly *lower* than the net income guidance of $810 to $890 million provided on December 8, 2005. Therefore, Toll Brothers' stock price could not have been inflated as of December 9, 2004 as a result of the company's 20% net income growth guidance for FY 2006.

17. On February 23, 2005, Toll Brothers announced its financial results for the first quarter of FY 2005, increased its FY 2005 net income guidance to 60% growth from 2004, and projected FY 2006 net income growth of approximately 20%,[21] providing a range of 18% to 22%.[22] This resulted in a revised FY 2006 net income guidance of

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[18] "Toll Brothers Reports Record 4th Qtr 2004 EPS of $2.22, Up 87% vs 4th Qtr 2003," Toll Brothers Press Release, December 9, 2004.

[19] "Toll Brothers Reports Record 4th Qtr 2004 EPS of $2.22, Up 87% vs 4th Qtr 2003," Toll Brothers Press Release, December 9, 2004.

[20] "Q. Maybe I misspoke before. 687.31 million is more than a hundred million less than 810 million, is that correct? A. Yes." Finnerty Deposition, at 179:22-25.

[21] "Toll Brothers' Record 1st Qtr Net Income Rises 120% To $110.2 Million," Toll Brothers Press Release, February 23, 2005.

[22] "Q1 2005 Toll Brothers Earnings Conference Call - Final," *FD (Fair Disclosure) Wire*, February 23, 2005.

$785.49 million, with a range of $772.40 million to $798.58 million. Plaintiffs claim that:

> …[T]here was no reasonable basis in fact for the forecasts of "approximately" or "at least" 20% net income growth for Toll Brothers during either F06 or F07 as of February and March 2005, especially after having raised its F05 net income forecast to 60% growth.[23]

18. However, as Professor Finnerty testified,[24] the company's February 23, 2005 net income projection of $785.49 million (with a range of $772.40 million to $798.58 million) for FY 2006 is again lower than the guidance of $810 to $890 million provided on December 8, 2005. Therefore, contrary to Plaintiffs' claims, Toll Brothers' stock price could not have been inflated as of February 23, 2005 as a result of the company's FY 2006 net income guidance.

19. On May 26, 2005, Toll Brothers announced its financial results for the second quarter of FY 2005, increased its FY 2005 net income guidance to 70% growth from 2004, and maintained its approximately 20% net income growth projection for FY 2006,[25] providing a range of 17% to 23%.[26] This resulted in a revised FY 2006 net income guidance of $834.59 million, with a range of $813.72 million to $855.45 million. Since this projection was within the net income guidance of $810 to $890 million announced on December 8, 2005, and as Professor Finnerty testified, the midpoint of the

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[23] Amended Complaint, ¶ 68(f).

[24] "Q. The company, on February 23, 2005, increased its fiscal year 2005 net income guidance to 60 percent growth and a continued guidance of approximately 20 percent for 2006, is that correct? A. Yes, I believe that's correct. Q. And you accept that that would imply net income growth of $785.49 million? A. I'll accept your math. Q. That's still lower than the range that was forecasted by the company after the end of the class period, correct? A. It's lower than the range that they announced December 8, 2005." Finnerty Deposition, at 181:12-25.

[25] "Toll Brothers' Record FY 2005 2nd Qtr Net Income Rises 135% to $170 Million," Toll Brothers Press Release, May 26, 2005.

[26] "Q2 2005 Toll Brothers Earnings Conference Call - Final," *FD (Fair Disclosure) Wire*, May 26, 2005.

projection ($834.59 million) was lower than the midpoint of the December 8, 2005 guidance ($850 million),[27] Toll Brothers' stock price could not have been inflated as of May 26, 2005 as a result of the company's FY 2006 net income guidance.

20. On August 25, 2005, Toll Brothers announced its financial results for the third quarter of FY 2005, increased its FY 2005 net income guidance to 80% growth from 2004, and maintained its approximately 20% net income growth guidance for FY 2006.[28] As Professor Finnerty testified,[29] this resulted in a revised FY 2006 net income guidance of $883.68 million for FY 2006, still within the $810 to $890 million guidance announced on December 8, 2005. Thus, even on the day of the last quarterly earnings release prior to the end of the Alleged Class Period, Toll Brothers' FY 2006 net income guidance was within the FY 2006 net income guidance provided on December 8, 2005. In fact, as Professor Finnerty testified,[30] throughout the Alleged Class Period, Toll Brothers' FY 2006 net income guidance, in dollar terms, was never above the December 8, 2005 guidance. Thus, the company's FY 2006 net income guidance could not have reasonably inflated Toll Brothers' stock price during the Alleged Class Period and,

[27] "Q. That [May 26] forecast is very similar to the range forecasted on December 8th, correct? A. I don't think, so I think 855 is $35 million less than 890. It seems to be more than I make. It's a significant number, the lower end is about the same, but I think the upper end is clearly lower. Q. I agree, and that would mean that the midpoint of the May range was lower than the mid point of the December range, is that correct? A. That's correct." Finnerty Deposition, at 182:18-183:6.

[28] "Toll Brothers' Record FY 2005 3rd Qtr Earnings Rise 103 Percent to $215.5 Million," Toll Brothers Press Release, August 25, 2005.

[29] "Q. And on August 25, 2005, the company increased its fiscal year net income guidance from 2005 from 80 percent growth and projected fiscal year 2006 net income growth of approximately 20 percent, is that correct? A. That's my understanding. Q. And you'll accept that that projection implies net income in 2006 of 883.68 million? A. Once again, I'll trust your math. Q. And that number is still within the range that was projected on December 8, 2005, correct? A. Yes." Finnerty Deposition, at 183:7-20.

[30] "Q. Throughout the class period, the company's forecasts for fiscal year 2006 net income were either below or in the range that the company forecasted after the end of the class period, correct? A. At or below what they forecasted, after the class period, they will have lots of forecasts, but your statement is correct with regard to the forecast on December 8th, '05." Finnerty Deposition, at 183:21-184:6.

accordingly, purported corrective disclosures of the guidance could not reasonably have caused any declines in Toll Brothers' stock price.

21. Moreover, in claiming that Toll Brothers allegedly misrepresented its growth prospects for FY 2006 during the Alleged Class Period, Plaintiffs overlook the fact that the December 8, 2005 revision in the company's percentage FY 2006 net income growth guidance was in large part due to the fact that the company delivered a portion of the homes that it previously expected to deliver in FY 2006 in the last quarter of FY 2005. As Robert Toll, Toll Brothers' Chairman and Chief Executive Officer, and Joel Rassman, the company's Chief Financial Officer, explained during the December 8, 2005 conference call:

> ROBERT TOLL: The major item in dealing with 2006 is that we accelerated how many homes in ['05] that we didn't think would be there?
>
> JOEL RASSMAN: From the beginning of the year 670 homes, at the end of the year, 200 homes.[31]

22. As a result, Toll Brothers' actual net income for FY 2005 was $806.11 million, which represented 97% growth from FY 2004.[32] This was $70 million higher than the previous guidance of $736.40 million provided on August 25, 2005, and represented a 17% higher growth rate than the previous growth guidance of 80% provided on August 25, 2005. It represented, at least in part, a shift of income from FY 2006 to the last quarter of FY 2005, not a reduction in the company's overall income. Therefore, to evaluate whether the Toll Brothers' FY 2006 net income guidance caused any artificial

[31] "Q4 2005 Toll Brothers Earnings Conference Call – Final," *FD (Fair Disclosure) Wire*, December 8, 2005.

[32] "Toll Brothers' FY 2005 Net Income Rises 97 Percent to $806.1 Million," Toll Brothers Press Release, December 8, 2005.

inflation in the company's stock price during the Alleged Class Period and whether purported corrective disclosures of the guidance caused any stock price declines, it is helpful to compare the combined net income projections for FY 2005 and FY 2006 provided during the Alleged Class Period with those provided on December 8, 2005. Table 2 below presents this comparison for each of the dates during the Alleged Class Period on which the dollar amounts of Toll Brothers' FY 2005 and FY 2006 net income guidance changed:

Table 2

Toll Brothers, Inc.
Combined FY 2005 and FY 2006
Net Income Guidance

Source: Toll Brothers, Inc. Press Releases and Conference Calls

(Dollar Figures in Billions)

Earnings Announcement Date	Toll Brothers Guidance
After Alleged Class Period	
12/8/05	$1.616 – $1.696
Alleged Class Period	
12/9/04	$1.260
2/23/05	$1.440 [1]
5/26/05	$1.530 [2]
8/25/05	$1.620

Note:

[1] In the conference call following the 2/23/05 press release, Toll Brothers provided FY 2006 net income growth guidance of approximately 20%, with a range of 18% to 22%.

[2] In the conference call following the 5/26/05 press release, Toll Brothers provided FY 2006 net income growth guidance of approximately 20%, with a range of 17% to 23%.

23. As Table 2 demonstrates, Toll Brothers' combined FY 2005 and 2006 net income projections of $1.260 billion, $1.440 billion and $1.530 billion as of December 9, 2004, February 23, 2005, and May 26, 2005, respectively, were all below the combined projection of $1.616 billion to $1.696 billion provided on December 8, 2005. In addition, the combined FY 2005 and 2006 net income projection of $1.620 billion provided on August 25, 2005 was very close to the lower end of the $1.616 billion to $1.696 billion combined projection provided on December 8, 2005. This confirms my conclusion that Toll Brothers' net income guidance throughout the Alleged Class Period was, in dollar terms, at all times below or within the guidance provided at the close of the Alleged Class Period.

24. The FY 2007 net income guidance provided by Toll Brothers during the Alleged Class Period was also consistent with the FY 2007 net income guidance provided at the close of the Alleged Class Period. The company's August 4, 2005 and August 25, 2005 earnings press releases, the only earnings announcements during the Alleged Class Period in which FY 2007 net income guidance was provided, projected "approximately 20%" net income growth in FY 2007 "assuming continued healthy demand."[33] During the company's August 4, 2005 conference call, Joel Rassman referred to "the anticipated 20% plus or minus net income growth projected for 2006 and 2007."[34] Toll Brothers' earnings release on December 8, 2005, a month after the end of the Alleged Class Period, included the following quote from Joel Rassman:

[33] "Toll Brothers' Record FY 2005 3rd Qtr Home Bldg Revenues Rise 55 Percent to $1.54 Billion," Toll Brothers Press Release, August 4, 2005; "Toll Brothers' Record FY 2005 3rd Qtr Earnings Rise 103 Percent to $215.5 Million," Toll Brothers Press Release, August 25, 2005.

[34] "Toll Brothers Outlook Release – Final," *FD (Fair Disclosure) Wire*, August 4, 2005.

> Based on our projected community count growth and assuming healthy demand, we anticipate record results in FY 2007. However, these are uncertain times and results could prove better or worse than the previous guidance we gave of 20% growth for FY 2007. We will defer giving more detailed guidance with respect to fiscal 2007 until later in the year.[35]

Thus, as an economic matter, the FY 2007 net income guidance Toll Brothers provided on December 8, 2005 did not contradict the FY 2007 guidance provided during the Alleged Class Period. It merely called for caution in light of contemporaneous economic developments, i.e., increased uncertainty, which were previously unknown and unknowable. This is also confirmed by the fact that, as I discuss in Section IV below, market expectations for Toll Brothers' combined FY 2005, 2006 and 2007 net income at the close of the Alleged Class Period were above the combined FY 2005, 2006 and 2007 net income guidance provided by the company during the Alleged Class Period.

25. In short, Plaintiffs cannot reasonably claim either that Toll Brothers' stock price was inflated during the Alleged Class Period due to the company's guidance or that purported corrective disclosures of the company's guidance caused any stock price declines.

IV. The FY 2006 Net Income Growth Guidance Toll Brothers Provided During the Alleged Class Period Was at All Times Below Market Expectations at the Close of the Alleged Class Period

26. I have also reviewed analysts' consensus estimates of FY 2006 net income throughout the Alleged Class Period. The stock price of a company at any given point in time is determined by, among other things, investor expectations of the company's future

[35] "Toll Brothers' FY 2005 Net Income Rises 97 Percent to $806.1 Million," Toll Brothers Press Release, December 8, 2005.

earnings. As Professor Finnerty testified,[36] analyst consensus estimates reflect investor expectations of a company's future earnings, and are used as a proxy for overall market expectations by market participants and financial economists who conduct academic research on stock markets.[37] Therefore, if the net income guidance provided throughout the Alleged Class Period was at all times below analyst consensus expectations at the close of the Alleged Class Period, then, as an economic matter, the guidance provided during the Alleged Class Period could not have caused any of the difference between Toll Brothers' stock price during the Alleged Class Period and the stock price at the close of the Alleged Class Period.

27. I obtained analyst consensus estimates from Institutional Brokers' Estimate System (I/B/E/S), a service that collects and disseminates information on analyst estimates. I/B/E/S consensus data are frequently used in articles published in academic finance journals that study investor expectations in stock markets.[38] According to his deposition testimony, Professor Finnerty himself has relied on I/B/E/S data in his academic and consulting work.[39] In addition, both the portfolio manager for Lead Plaintiff City of Hialeah Employees' Retirement System during the Alleged Class Period and the portfolio manager for Lead Plaintiff Laborers Pension Trust Funds for Northern

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[36] "Q. Once the analyst reports are issued, they could be a proxy for investor expectations, is that correct? A. Yes, that's correct, they could be." Finnerty Deposition, at 145:12-15.

[37] MacKinlay, A. Craig, "Event Studies in Economics and Finance," *Journal of Economic Literature*, Vol. 35, No. 1, March 1997, pp. 13-39, cited in Finnerty Declaration, FN 30; Barber, Brad M., Paul A. Griffin, and Baruch Lev, "The Fraud-on-the-Market Theory and the Indicators of Common Stocks' Efficiency," *Journal of Corporation Law*, Vol. 19, Winter 1994, pp. 285-312, cited in Finnerty Declaration, FN 30.

[38] MacKinlay, A. Craig, "Event Studies in Economics and Finance," *Journal of Economic Literature*, Vol. 35, No. 1, March 1997, pp. 13-39, cited in Finnerty Declaration, FN 30; Barber, Brad M., Paul A. Griffin, and Baruch Lev, "The Fraud-on-the-Market Theory and the Indicators of Common Stocks' Efficiency," *Journal of Corporation Law*, Vol. 19, Winter 1994, pp. 285-312, cited in Finnerty Declaration, FN 30.

[39] "Q. Have you ever used I/B/E/S/ analyst consensus data in your academic or consulting work? A. Yes, I have." Finnerty Deposition, at 185:18-21.

California testified that they relied on I/B/E/S consensus data on future growth and earnings estimates in making investment decisions.[40]

28. I/B/E/S updates consensus estimates once a month around the middle of the month. Table 3 below compares Toll Brothers' FY 2006 net income guidance with the corresponding analyst consensus estimates during and at the close of the Alleged Class Period.

[40] "Q: I assume [forecasted earnings growth] is also consensus analysts' forecasts as well? A: Correct.... We get our data from IBES, so it comes from the institutional brokers estimate survey." Deposition of Michael Jensen Borgen, April 20, 2010 ("Borgen Deposition"), at 65:20-66:6. "Q: Is that an estimate of future dividends? A: No, it's a [*sic*] future growth and earnings. Q: How do you obtain that data? A: It's from a company called IBES which consolidates all of the analyst estimates of earnings and growth rates and earnings." Deposition of Harvey Fram, April 28, 2010, at 77:20-78:4.

Table 3

Toll Brothers, Inc.
FY 2006 Net Income Guidance and I/B/E/S Estimates

Source: Toll Brothers, Inc. Press Releases and Conference Calls; I/B/E/S

(Dollar Figures in Millions)

Announcement Date	Toll Brothers Guidance	Mean I/B/E/S Estimate [1]	Difference Between I/B/E/S Estimate and Guidance [2]
After Alleged Class Period			
11/8/05		$897.15	
Alleged Class Period			
12/9/04	$687.31	$700.10	$12.79
2/23/05	$785.49 [3]	$824.49	$39.00
5/10/05	$785.49	$837.66	$52.17
5/26/05	$834.59 [4]	$883.38	$48.79
8/4/05	$834.59	$946.17	$111.58
8/25/05	$883.68	$983.90	$100.22
10/3/05	$883.68 [5]	$967.31	$83.63

Note:

[1] I/B/E/S estimates are as of the first update after each announcement date. I/B/E/S updates its estimates typically once a month, around the middle of the month. Mean and median I/B/E/S net income estimates are close or equal in value.

[2] The amount by which the mean I/B/E/S net income estimate exceeds the midpoint of Toll Brothers net income guidance is shown.

[3] In the conference call following the 2/23/05 press release, Toll Brothers provided FY 2006 net income growth guidance of approximately 20%, with a range of 18% to 22%, or, in dollar terms, $772.40 million to $798.58 million.

[4] In the conference call following the 5/26/05 press release, Toll Brothers provided FY 2006 net income growth guidance of approximately 20%, with a range of 17% to 23%, or, in dollar terms, $813.72 million to $855.45 million.

[5] Toll Brothers did not update its FY 2006 net income guidance on 10/3/05. The most recent guidance is shown.

29. As shown on the first row of Table 3, the analyst consensus FY 2006 net income estimate was $897.15 million as of mid-November 2005, the first time I/B/E/S updated consensus estimates after the end of the Alleged Class Period. This was over $13 million greater than the company FY 2006 net income guidance of $883.68 million that was in

effect immediately prior to the end of the Alleged Class Period and is shown on the last row of Table 3. Thus, market expectations at the close of the Alleged Class Period were, in fact, above the most recent company guidance provided prior to the close of the Alleged Class Period.

30. In fact, as Professor Finnerty conceded in his deposition, throughout the Alleged Class Period, the company's FY 2006 guidance "never once" exceeded the analyst consensus FY 2006 estimate at the close of the Alleged Class Period.[41] Table 3 shows that on December 9, 2004, the first day of the Alleged Class Period, Toll Brothers provided FY 2006 net income guidance of $687.31 million in dollar terms. The mid-December 2004 analyst consensus FY 2006 net income estimate, the first updated estimate provided after December 9, 2004, was $700.10 million, more than $12 million above company guidance.[42]

31. As Professor Finnerty conceded, analyst estimates continued to be higher than the company's guidance throughout the Alleged Class Period and became increasingly more so from the beginning of the Alleged Class Period through mid-August 2005.[43] As of

[41] "Q. Does it surprise you to learn that on November 17, 2005, I/B/E/S/ reported a mean analyst estimate of 897.15 million for 2006? A. No. Q. And median number for that date is 894.28 million? A. Pretty close to the company's last guidance. Q. Isn't it correct that during the alleged class period, the company's guidance for 2006 never once exceeded the analyst consensus estimate that existed on November 17, 2005, even after all of the news that was disclosed on November 8th? A. That's what it looks like." Finnerty Deposition, at 194:9-24.

[42] "Q. We don't have access to I/B/E/S/ as we sit here right now, but will you accept my representation that on December 16, 2004, I/B/E/S/ reported a mean analyst net income estimate for 2006 of 703 million for Toll Brothers? A. Yes, I have no reason to doubt you. Q. The mean of the analyst estimates is approximately $13 million higher than the company's estimates, is that correct? A. Yes, the arithmetic is correct, it's about 13 million." Finnerty Deposition, at 188:9-20.

[43] "Q. On February 23, 2005, the company's projected 2006 net income would be 785.49 million, if there was 20 percent growth, is that correct? A. Yes, midpoint of the range, it looks like it would be 785.49. Q. Does it surprise you to learn that on March 17, 2005, I/B/E/S/ reported a mean analyst net income estimate of 824.49 million for Toll Brothers? A. No, I assume you correctly picked up the number from the I/B/E/S/ report. Q. The mean of the analyst estimates is $39 million higher than the company's estimates, again, using 785 million for the company's forecast, is that correct? A. Based on this exhibit, yes. Q. The spread between the two numbers had grown since December 2004, is that correct? A. Yes, that's correct. Q. On May 10th, the company's guidance stays the same, but the mean consensus estimate increases another 13 million, so let's look at May 26th, on that day Toll Brothers' projected 2006

August 4, 2005, the company's FY 2006 net income guidance was $834.59 million in dollar terms. The mid-August analyst consensus estimate, the first updated estimate provided after August 4, 2005, was $946.17 million, over $111 million above company guidance. On August 25, 2005, the company's FY 2006 net income guidance increased to $883.68 million in dollar terms. The mid-September analyst consensus estimate, the first updated estimate provided after August 25, 2005, was $983.90 million, over $100 million above company guidance. Professor Finnerty expressed surprise at his deposition that "the difference would be that high," and admitted that he did not consider the difference between analyst consensus estimates and company guidance as part of his analysis in this case.[44]

32. This pattern in analyst expectations suggests that investors believed Toll Brothers' net income growth expectations were conservative throughout the Alleged Class Period and independently developed their own expectations. A number of analysts explicitly commented on what they perceived to be conservative FY 2006 net income guidance by the company. Professor Finnerty himself testified that analysts can reach a different conclusion than a company regarding the company's expected growth based on

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net income of 834.59 million, is that correct? A. Yes. Q. Does it surprise you to learn that on June 16, 2005, I/B/E/S/ reported a mean analyst net income estimate of 883.38 million? A. Not really, no. Q. The mean of the analyst estimates is approximately $49 million higher than the company's estimates, you're using 834.59 million, is that correct? A. Your math is right. Q. The spread between the two numbers had grown since February 2005, is that correct? A. It grew slightly down a little for early May, but -- you really should use the later of the two dates, it had grown since the prior forecast, you can't compare them as of the announcement date because that I/B/E/S/ forecast didn't exist, your comparison is really since the I/B/E/S/ date, but your math is right." Finnerty Deposition, at 189:7-191-7.

[44] "Q. The next date when Toll Brothers increased the guidance for 2006 was August 25, 2005. As we discussed earlier on that date, Toll Brothers was projecting 2006 net income of 883.68 million, is that correct? A. Yes. Q. Does it surprise you to learn on September 15, 2005, I/B/E/S/ reported a mean analyst net income estimate of 983.9 million for Toll Brothers in 2006? A. That does surprise me, it would be that high and the difference would be that high, that does surprise me. Q. Did you consider that as part of your analysis in this case? A. I did not. Q. The mean of the analyst estimates is approximately $100 million higher than the company's estimates, correct? A. According to these numbers, that is correct." Finnerty Deposition, at 191:8-192:5.

information they independently collect and assess,[45] and commented in his discussion of the August 25, 2005 alleged corrective disclosure that:

> At Credit Suisse First Boston, the analyst was impressed with the earnings report, but was wary of growth estimates and how that would affect future earnings. While Toll Brothers maintained its 20% net income growth forecast, the Street had been expecting 27% EPS growth for 2006.[46]

An AG Edwards analyst similarly noted on August 26, 2005:

> A point of consternation for many investors (and likely the reason for the sell-off in the shares) was that the company continues to adhere to what many investors consider an overly conservative 20% net income growth projection for FY06.… For FY06, we have upped our EPS estimate..., which implies 23% growth and in all likelihood will be proven conservative in a quarter or two.[47]

33. Comparing the analyst consensus FY 2006 net income estimate shortly after the end of the Alleged Class Period with Toll Brothers' guidance during the Alleged Class Period confirms that the company's stock price was not inflated at any point during the Alleged Class Period as a result of company guidance. As Table 3 shows, the analyst consensus estimate declined from $967.31 million in mid-October 2005 to $897.15 million in mid-November 2005, but, as discussed above, still exceeded the maximum Toll Brothers guidance of $883.68 million during the Alleged Class Period. Thus, expectations developed by investors, which were substantially higher than company

[45] "Q. You agree that analysts collect and assessed [*sic*] information other than information that is provided by the companies they cover, correct? A. Yes. Q. You agree that based on the information that they collect and assess, analysts can reach a different conclusion than the company does about the company's expected growth, is that correct? A. Yes." Finnerty Deposition, at 197:21-198:7.

[46] Finnerty Declaration, ¶ 89.

[47] AG Edwards, "And the Beat Goes On," August 26, 2005.

guidance during the Alleged Class Period, declined to a level closer to—albeit still higher than—company guidance at the close of the Alleged Class Period.

34. Given the evidence presented above, one does not need to determine what caused Toll Brothers' stock price movements during the Alleged Class Period to reach the conclusion that company guidance could not reasonably have caused those movements. Nevertheless, I explored potential reasons for those movements to confirm the validity of my conclusion. Professor Finnerty testified that analyst views can move the stock price independent of the company's representations.[48] To determine whether Toll Brothers' stock price movements during the Alleged Class Period could indeed have been caused by analyst expectations as opposed to company guidance, I compared the company's stock price movements to the spread between analyst consensus FY 2006 net income estimates and the company's FY 2006 net income guidance at different points before, during and after the Alleged Class Period. I found that from September 16, 2004 until December 15, 2004, the day before I/B/E/S updated analyst consensus estimates for Toll Brothers for the first time after the beginning of the Alleged Class Period, the analyst consensus FY 2006 net income estimate was consistent with the company's FY 2006 net income guidance.[49] The analyst consensus estimate exceeded company guidance for the

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[48] "Q. So analyst's estimates can cause movement in the company's stock price that is independent of anything the company says, is that correct? A. It could. I don't think that's what's at work here. If an analyst forms a different view from what the company said, if that change in the atmosphere was credible, that can effect the stock price. Q. Independent of what the company was saying? A. It can, yes. Q. If that were the case, there could be new information that's disclosed to the market that corrects what that analyst had been forecasting, is that correct? … A. Either correct it is or takes a different view, yes, there could be. Q. So there could be inflation in a company's stock price that's caused by what analysts are saying, is that correct? A. It's possible that if an analyst conveys information that may be wrong, but is viewed as credible at the time, that that could move the stock and that can then be corrected when the inflation comes out of the stock, it's possible. Q. It's later revealed that it was not credible, that new information could cause the inflation to come out of the stock price, is that correct? A. That's correct, it could happen." Finnerty Deposition, at 147:9-148:17.

[49] Between September 16, 2004 and December 15, 2004, the analyst consensus FY 2006 net income estimate was $554 million. Toll Brothers did not provide explicit FY 2004 net income guidance between August 25, 2004 and December

first time beginning mid-December 2004, when the updated estimate reflected analysts' reaction to the company's December 9, 2004 earnings announcement. As Table 3 shows, the spread between the analyst consensus estimate and the company guidance widened consistently from that time until mid-August 2005. The company's stock price increased by 78.8% during the same period, from $27.055 on December 8, 2004 to $48.38 on August 18, 2005, the date on which I/B/E/S updated analyst consensus estimates in August 2005. The subsequent narrowing of the spread between the analyst consensus estimate and the company guidance was accompanied by a decline in the stock price. Consistent with Professor Finnerty's testimony, this pattern indicates that to the extent there was any artificial inflation in Toll Brothers' stock price during the Alleged Class Period, it was likely caused not by company guidance, but by analyst expectations that were far in excess of company guidance.

35. Furthermore, as discussed in Section III above, Toll Brothers' actual FY 2005 net income turned out to be substantially higher than the company guidance provided throughout the Alleged Class Period. The company's stock price throughout the Alleged Class Period would reflect not just investor expectations for FY 2006, but investor expectations for FY 2005, FY 2006 and FY 2007. Table 4 below shows (a) the combined analyst consensus FY 2005, FY 2006 and FY 2007 net income estimate at the close of the Alleged Class Period, and (b) for each of the dates during the Alleged Class Period on

8, 2004, but indicated in its third quarter FY 2004 earnings press release issued on August 25, 2004 that earnings had grown by 37% for the first nine months of FY 2004. I applied the 37% growth rate to the company's FY 2003 net income of $259.82 million to obtain an estimated FY 2004 net income guidance for the August 25, 2004–December 8, 2004 period. I then applied to this amount the company's FY 2005 net income growth guidance of 30% and FY 2006 net income growth guidance of 20% during the same period. This resulted in a dollar value of $555 million for the company's FY 2006 net income guidance between August 25, 2004 and December 8, 2004.

which the company provided FY 2007 guidance, the dollar amounts of Toll Brothers' combined FY 2005, FY 2006 and FY 2007 net income guidance.

Table 4

Toll Brothers, Inc.
Combined FY 2005, FY 2006 and FY 2007
Net Income Guidance and I/B/E/S Estimates

Source: Toll Brothers, Inc. Press Releases and Conference Calls; I/B/E/S

(Dollar Figures in Billions)

Announcement Date	Combined Net Income
After Alleged Class Period – Analyst Consensus Estimate [1]	
11/8/05	$2.685
Alleged Class Period – Toll Brothers Guidance [2]	
8/4/05	$2.532
8/25/05	$2.680

Note:

[1] The sum of the mean I/B/E/S net income estimates for FY 2005, FY 2006 and FY 2007 is shown. Estimates are as of 11/17/05, the first date I/B/E/S updated analyst consensus estimates following the 11/8/05 earnings announcement date.

[2] The sum of Toll Brothers' net income guidance for FY 2005, FY 2006 and FY 2007 is shown as of the two earnings announcement dates on which the company provided FY 2007 guidance.

36. As shown on the first row of Table 4, the combined analyst consensus FY 2005, FY 2006 and FY 2007 net income estimate was $2.685 billion as of mid-November 2005, the first time I/B/E/S updated consensus estimates after the end of the Alleged Class Period. As shown on the second row of Table 4, the company's combined FY 2005, FY 2006 and FY 2007 net income guidance on August 4, 2005, the first date on which the company provided guidance for FY 2007, was $2.532 billion. This was $153 million below the combined analyst consensus estimate at the close of the Alleged Class Period. On August 25, 2005, the company's combined guidance increased to $2.680 billion, still

$5 million below the combined analyst consensus estimate at the close of the Alleged Class Period. In other words, the company's combined guidance during the Alleged Class Period was at all times below the combined analyst consensus estimate at the close of the Alleged Class Period.

37. Plaintiffs simply do not have a basis for claiming either that Toll Brothers' stock price was inflated during the Alleged Class Period due to company guidance or that purported corrective disclosures of company guidance caused any stock price declines.

V. Professor Finnerty Has Not Demonstrated Either that Toll Brothers' Stock Price Was Inflated by the Alleged Misrepresentations or that Purported Corrective Disclosures of the Alleged Misrepresentations Caused Any Stock Price Declines

38. Even if one were to assume, for the sake of argument, that Defendants' guidance regarding Toll Brothers' expected growth during the Alleged Class Period was not below or within with the guidance provided at the close of the Alleged Class Period, neither Plaintiffs nor Professor Finnerty have demonstrated either that the allegedly misstated guidance caused artificial inflation in Toll Brothers' stock price or that purported corrective disclosures of that guidance caused any stock price declines. Professor Finnerty has submitted a 45-page declaration (excluding exhibits), 30 pages of which he devotes to performing several analyses to determine if Toll Brothers' stock traded in an efficient market during the Alleged Class Period and opining that the stock did in fact trade efficiently.[50] Yet, he does not address, and testified that he was not asked to address, whether the alleged misrepresentations caused any increases in Toll Brothers'

[50] Finnerty Declaration, pp. 5-35.

stock price.[51] Without any evidence of stock price increases caused by the alleged misrepresentations, Professor Finnerty has failed to establish whether the alleged misrepresentations caused any artificial inflation in the stock price.

39. Plaintiffs identify 16 dates in the Amended Complaint on which they allege Defendants made false and misleading statements regarding the company's growth prospects. Appendix A provides an analysis of the company's announcements on Plaintiffs' alleged misrepresentation days and the results of Professor Finnerty's own event study. While this analysis is not necessary for my conclusion that there is no evidence of artificial inflation in Toll Brothers' stock price due to the alleged misrepresentations in the Amended Complaint, it independently supports that conclusion.

40. Professor Finnerty has also failed to establish whether purported corrective disclosures of the alleged misrepresentations of Toll Brothers' growth prospects caused declines in the company's stock price. Plaintiffs claim that the "truth" about Toll Brothers' alleged misrepresentations of its growth prospects was revealed in a series of purported disclosures on August 4, August 25, October 3, and November 8, 2005. Specifically, they allege that the following purported disclosures were made:[52]

a. Robert Toll's statement during a conference call on August 4, 2005 that "[w]e do see cooling in some local markets that were overheated just a few months ago";

[51] "Q. Plaintiff's counsel did not ask you to opine on whether any of the alleged misrepresentations in the amended complaint caused statistically significant movement in Toll Brothers' stock price on the day those statements were made, correct? A. That's correct." Finnerty Deposition, at 103:6-12.

[52] Amended Complaint ¶¶ 96, 106, 125, and 130.

b. Robert Toll's statement during an August 25, 2005 conference call that traffic "has been down 10% to 20% per community going back for almost a quarter and a half";

c. Robert Toll's statement during an interview published in *USA Today* on October 3, 2005 that there was a "general slowdown in most of the markets" and he expected a 10% slowdown in orders; and

d. The company's announcement on November 8, 2005 that it would provide an updated FY 2006 net income growth guidance on December 8, 2005.

41. Professor Finnerty purports to analyze Toll Brothers' stock returns on each of the four alleged corrective disclosure dates to determine "whether the share price declines can reasonably be attributed to the fraud-related news events."[53] However, his purported analysis merely establishes that Toll Brothers' stock price declined on the alleged corrective disclosure dates as a result of the totality of the news announced on those days. He does not make any effort to disaggregate the effect, if any, of any particular piece of information.[54] In fact, he testified that "it would be virtually impossible" to do so.[55]

[53] Finnerty Declaration, ¶ 83.

[54] "Q. You're not offering an opinion on whether any particular piece of information was corrective, is that correct? … A. I'm not…. Q. When you say you're not rendering an opinion on whether or not specific items caused the decline, does that mean you haven't tried to determine whether any particular piece of news caused the decline, is that correct? A. That's correct…." Finnerty Deposition, at 166:14-167:11.

[55] "Q. Is it your opinion that Toll Brothers' stock price declined [*sic*] on October 3, 2005 is attributable, in part, to the October 2nd New York Times article? A. Could be. There is also the interview with Ron Insana, so I haven't tr[ied] to parse out the impact between the New York Times article and the interview with Insana and all the analysts who reacted to both of those items of information, but it's part of the mix. Q. You haven't tried to determine whether any of these particular pieces were corrective, rather than just negative, correct? A. I think they're part, in my view, part of the corrective mix. What I haven't tried to do is figure out what part of the impact that I measured is directly attributable to each of those separately. I think it's part of the mix. When I'm interpreting a corrective disclosure and measuring the impact, I'm taking the corrective information as a body of information, I'm not trying to separate out its impact of individual items. Q. Could do you that if you were asked to? A. I think with that number of announcements, I think it would be virtually impossible because the only way one can really separate it is by being able to distinguish separate impacts, in other words, one would have to see an announcement, get enough of a time period to measure the impact before the next one occurs and given the large number, I'm not sure it would be feasible to do that." Finnerty Deposition, at 168:18-170:7.

Thus, he fails to establish that any of the stock price declines experienced by Toll Brothers on the dates he analyzes were related to the specific purported corrective disclosures alleged in the Amended Complaint.

42. Appendix B provides a detailed discussion of the flaws in Professor Finnerty's so-called "loss causation" analysis. My review of his analysis supports my conclusion that there is no evidence that the purported corrective disclosures caused any declines in Toll Brothers' stock price.

43. In conclusion, neither Plaintiffs nor Professor Finnerty can establish either that Toll Brothers' stock price was artificially inflated during the Alleged Class Period by the alleged misrepresentations in the Amended Complaint, or that purported corrective disclosures of those alleged misrepresentations caused any stock price declines.

Executed this 15 of June, 2010

Michael R. Gibbons

Michael R. Gibbons

APPENDIX A: Analysis of Alleged Misrepresentation Days

1. As discussed in Section III of my declaration, Defendants' guidance regarding Toll Brothers' expected growth during the Alleged Class Period was at all times below or within the guidance provided at the close of the Alleged Class Period. Even if one were to assume, for the sake of argument, that this were not the case, neither Plaintiffs nor Professor Finnerty have demonstrated that the allegedly misstated guidance had a material positive impact on Toll Brothers' stock price. Plaintiffs identify 16 dates on which they allege that Defendants made false and misleading statements regarding the company's growth prospects (and no purported corrective disclosures).[56] All of these dates correspond to either the release of quarterly or annual performance or financial data by Toll Brothers or media interviews with Robert Toll or Joel Rassman. (See Exhibit 4.) As discussed in Section V of my declaration, Professor Finnerty has testified that he was not asked to and did not determine whether any of these alleged false and misleading statements caused statistically significant movements in Toll Brothers' stock price.[57]

2. I conducted a review of the company's announcements and the results of Professor Finnerty's own event study. Based on my review, I found no evidence that the stock price was artificially inflated due to the alleged misrepresentations the company made about its growth prospects. As Exhibit 4 shows, based on Professor Finnerty's own event study results, Toll Brothers' stock price did not experience a statistically significant

[56] Plaintiffs allege in the Amended Complaint that Defendants made false and misleading statements as well as purported corrective disclosures on August 4, 2005, August 25, 2005 and October 3, 2005. These three dates are excluded from the analysis presented in this Appendix.

[57] "Q. Plaintiff's counsel did not ask you to opine on whether any of the alleged misrepresentations in the amended complaint caused statistically significant movement in Toll Brothers' stock price on the day those statements were made, correct? A. That's correct." Finnerty Deposition, at 103:6-12.

increase on 11 of the 16 alleged misrepresentation days. As I explain in detail below, to the extent that his event study shows the stock price increased significantly on the remaining alleged misrepresentation dates, Plaintiffs have either:

a. not demonstrated that the increases on those dates were caused by the alleged misrepresentations as opposed to the announcement of record financial results, which Plaintiffs do not allege were misrepresented, or, as discussed in Section IV of my declaration, analyst expectations of net income growth that were far in excess of the guidance provided by the company; or

b. not established that any new material information was disclosed on those dates that could potentially have caused Toll Brothers' stock price to increase, instead identifying stale information that could not have caused any changes in the stock price if the stock traded in an efficient market, as Professor Finnerty claims.

3. Specifically, of the 16 dates on which Plaintiffs allege Toll Brothers made false and misleading statements (and no purported corrective disclosures), five are earnings announcement dates (December 9, 2004; February 8, 2005; February 23, 2005; May 10, 2005; May 26, 2005). On one of these dates, May 10, 2005, Toll Brothers' closing stock price was lower than the previous day's closing stock price and Professor Finnerty's event study analysis indicates that the stock return was not statistically significant.[58] The announcements made on the remaining four dates disclosed new information about the company's actual performance, which Plaintiffs do not allege was misrepresented.

[58] Finnerty Declaration, Exhibit F, p. 4.

4. On December 9, 2004, Toll Brothers announced record FY 2004 earnings of $409.111 million.[59] Subsequent analyst commentary focused on the company's strong performance. For example, Lehman Brothers stated:

> Based on strong 4Q results, healthy backlog (+44% units), and good visibility into '05 earnings we're increasing our '05 TOL outlook.[60]

JMP Securities noted:

> Based on the excellent visibility the company enjoys and the continued strength it has achieved in its orders across most of its markets, we are [raising FY 2005 EPS estimates].[61]

5. Similarly, on February 8, 2005, Toll Brothers announced preliminary results for the first quarter of FY 2005, which included record revenue, order increases, and higher margins. As Professor Finnerty states in his declaration:

> Toll Brothers announced that preliminary homebuilding revenue for the quarter was up 68% year over year. Both new orders for homes and the backlog of homes under contract and not yet delivered grew by 44% in the quarter…. As a consequence of the positive earnings announcement, on February 8, 2005, Toll Brothers received positive ratings from several stock analysts, including raised estimates and outperform ratings from stock analysts at Raymond James & Associates and Wachovia Securities.[62]

The Wachovia Securities report cited by Professor Finnerty commented:

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[59] "Toll Brothers Reports Record 4th Qtr 2004 EPS of $2.22, Up 87% vs 4th Qtr 2003," Toll Brothers Press Release, December 9, 2004.

[60] Lehman Brothers, "LT Still Positive," December 10, 2004.

[61] JMP Securities, "F4Q04 Earnings Surprise; Lifts Guidance to 40% EPS Growth; Raising Estimates," December 10, 2004.

[62] Finnerty Declaration, ¶ 39.

> [W]e raised our 2005 EPS estimate to $8.00 from $7.50 and our 2006 EPS projection to $9.40 from $8.60 based on the strong order growth.[63]

Similarly, a Merrill Lynch report stated:

> We are raising our F2005 and F2006 estimates…based on higher than expected backlog and average home price reported yesterday 1Q05.[64]

JMP Securities also improved its outlook for Toll Brothers, commenting that "[e]stimates keep going up based on higher revenues and margins."[65]

6. On February 23, 2005, Toll Brothers announced its final results for the first quarter of FY 2005, which included higher than expected earnings, prompting an AG Edwards analyst to comment:

> Obviously, due to this quarter's higher than expected results we must adjust our FY05 numbers yet again. Likewise, our fiscal 2006 estimates move higher as well.[66]

7. Similarly, on May 26, 2005, Toll Brothers reported record second quarter FY 2005 earnings. As Professor Finnerty states in his declaration:

> Toll Brothers reported earnings per share growth for the second quarter of 126% year over year and second quarter revenue growth of 52%.[67]

Following the announcement, Wachovia commented:

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[63] Wachovia Securities, "TOL: Super FQl Orders Bowl Us Over--Raising Estimates," February 8, 2005, cited in Finnerty Declaration, FN 37.

[64] Merrill Lynch, "High Demand for Luxury," February 9, 2005.

[65] JMP Securities, "F1Q05 Orders Surge Once Again; Raising Estimates and Price Target," February 9, 2005.

[66] AG Edwards, "Toll Reports Strong FY 2005 First Quarter," February 23, 2005, cited in Finnerty Declaration, Exhibit G.

[67] Finnerty Declaration, ¶ 41.

> We are raising our FY 2005 estimate to $8.35 from $8.00 to reflect the $0.22 Q2 EPS beat and better than expected margins for the remainder of the year.…
>
> We are raising our FY 2006 forecast to $10.00 from $9.40 to reflect the strength of margins in backlog which already accounts for 40% of our FY06 total revenue estimate, the highest such visibility in the group…. Assuming a slight increase in share count, we are forecasting 20% EPS growth in FY 2006.[68]

Merrill Lynch provided similar reasons for the increase in its projections of Toll Brothers FY 2005 and FY 2006 performance:

> Stronger pricing, better margins and deliveries moved from the first half into the second half are driving this change.[69]

8. Based on Professor Finnerty's event study, Toll Brothers had a statistically significant positive stock return on December 9, 2004, February 8, 2005, February 23, 2005 and May 26, 2005. However, as Professor Finnerty testified, he was not asked to and has not made any attempt to link these stock price increases to the alleged misrepresentations.[70] In fact, his declaration does not include any discussion of the December 9, 2004 and February 23, 2005 announcements. He does discuss February 8, 2005 and May 26, 2005 in the "Market Efficiency" section of his declaration, but according to his deposition testimony, his only goal in doing so was to purportedly demonstrate that Toll Brothers' stock price reacted to new "economically significant"

[68] Wachovia Securities, "TOL: Q205 EPS Of $2.01 Exceeds Our $1.79 Estimate," May 26, 2005, cited in Finnerty Declaration, Exhibit G.

[69] Merrill Lynch, "Unprecedented Margin Expansion," May 27, 2005.

[70] "Q. Plaintiff's counsel did not ask you to opine on whether any of the alleged misrepresentations in the amended complaint caused statistically significant movement in Toll Brothers' stock price on the day those statements were made, correct? A. That's correct." Finnerty Deposition, at 103:6-12.

information about the company.[71] Accordingly, he does not indicate whether and, if so, to what extent the announcements made on those dates allegedly misrepresented the company's growth prospects. In fact, he appears to suggest that the company's stock price increased on February 8, 2005 and May 26, 2005 in response to announcements of record earnings growth, orders and backlog, none of which Plaintiffs allege were misrepresented. Toll Brothers did not make any changes to its FY 2005 and FY 2006 guidance on February 8, 2005. In addition, even if one were to assume that the stock price increase on May 26, 2005 could, in part, be attributable to the net income guidance for FY 2005 and FY 2006 the company provided on that date, Professor Finnerty testified that it would be "extremely difficult" to determine which portion of the increase would be attributable to the company's FY 2005 guidance, which Plaintiffs have not alleged was misrepresented, and which portion, if any, to the company's FY 2006 guidance.[72] In short, Plaintiffs have no basis to claim that any of Toll Brothers' stock price increases on December 9, 2004, February 8, 2005, February 23, 2005 and May 26, 2005 were caused by the company's net income growth guidance for FY 2006.

9. In addition, Plaintiffs have not identified any new information about Toll Brothers' growth prospects that was disclosed to the public on the remaining 11 dates on which they allege either Robert Toll or Joel Rassman made false and misleading statements in the media. In fact, Professor Finnerty himself does not identify any

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[71] "Q. Were the four other dates [in addition to the alleged corrective disclosure dates] meant to show a reaction to information that was perceived as positive by the market? A. Not necessarily. It meant to illustrate information that we believed would be economically significant and then were testing to see whether or not the market reacted the way we expected it to.…" Finnerty Deposition, at 43:6-13.

[72] "Q. Did you determine how much of the abnormal return was attributable to what the company said about growth in fiscal year 2005 versus what the company said about growth in fiscal year 2006? A. No. Q. Could you do that analysis? A. One might be able to do that, although if it's possible, it's extremely difficult." Finnerty Deposition, at 143:17-144:2.

"significant news" on 5 of the 11 dates (June 1, 2005; June 14, 2005; September 8, 2005; September 13, 2005; October 17, 2005).[73] The statements made by Robert Toll and Joel Rassman that Plaintiffs allege were false and misleading were merely reiterations of the information provided in Toll Brothers' press releases and conference calls on earnings announcement dates. Consistent with this, the results of Professor Finnerty's event study shows that on 9 of the 11 dates (May 24, 2005; June 1, 2005; June 9, 2005; June 14, 2005; June 16, 2005; July 28, 2005; August 16, 2005; September 8, 2005 and September 13, 2005), Toll Brothers did not experience a statistically significant stock price movement at the 5% level that is the standard used by researchers in finance and economics.[74] On June 27, 2005, another alleged misrepresentation date, Toll Brothers experienced a statistically significant stock price *decline* according to Professor Finnerty's event study. On October 17, 2005, the trading day after Sunday, October 16, 2005, when *The New York Times* published an article about Toll Brothers which contained statements by Robert Toll that Plaintiffs claim were fraudulent, Professor Finnerty's event study yields a statistically significant stock price increase. However, Professor Finnerty himself indicates that this article did not contain "significant news."[75] Consistent with his opinion, as with the other dates on which Plaintiffs allege either Robert Toll or Joel Rassman made false and misleading statements in the media, the

[73] Finnerty Declaration, Exhibit G, pp. 10, 16 and 18.

[74] Macey, Jonathan R., Geoffrey P. Miller, Mark L. Mitchell, and Jeffry M. Netter, "Lessons from Financial Economics: Materiality, Reliance, and Extending the Reach of Basic v. Levinson," *Virginia Law Review*, Vol. 77, No. 5, August 1991, pp. 1021-1028, cited in Finnerty Declaration, FN 30: "We suggest choosing a significance level such that the probability of a Type 1 error is less than 5%; this is a standard level used by researchers in finance and economics." See also Federal Judicial Center, *Reference Manual on Scientific Evidence*, 2nd ed., 2000, p. 124; Mitchell, Mark L., and Jeffry M. Netter, "The Role of Financial Economics in Securities Fraud Cases: Applications at the Securities and Exchange Commission," *The Business Lawyer*, Vol. 49, February 1994, pp. 545-590, cited in Finnerty Declaration, FN 30.

[75] Finnerty Declaration, Exhibit G, p. 18.

alleged misrepresentations attributed to Robert Toll did not contain any new information. Robert Toll merely reiterated statements about company goals that he had made several months before October 16, 2005 and statements about expected growth that he had made on August 25, 2005.[76] Such stale information could not have caused the increase in Toll Brothers' stock price on October 17, 2005 if the stock traded in an efficient market, as Professor Finnerty claims. In fact, in an efficient market, one would expect Toll Brothers' opening stock price on a given Monday to reflect the effect of any news released on the previous Sunday. Yet, the company's opening stock price on October 17, 2005 was $37.45, identical to its closing price on the prior trading day.[77] Consistent with the discussion above, this indicates that the increase in Toll Brothers' stock price on October 17, 2005 cannot reasonably be attributed to any statements by Robert Toll discussed in the October 16, 2005 *New York Times* article.

10. In short, there is no evidence that any of the allegedly misleading statements made in the media by Robert Toll and Joel Rassman caused artificial inflation in Toll Brothers' stock price.

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[76] According to the Amended Complaint (¶ 128), Robert Toll made the following misrepresentations in the October 16, 2005 *New York Times* article (emphasis in the Amended Complaint): "His experience with Nimby ['Not in my backyard'] opposition, Toll added, leads him to believe that the political resistance to land development around the country will get more intense in the coming years. When I spoke with him in September, he noted that a drop in consumer confidence in the wake of Hurricane Katrina was not a good sign for an economy 'that runs on confidence.' ***Still, he said, the fundamentals were the same as before: the supply of developable acreage in many markets would remain limited, ensuring big profits.*** Indeed, Toll seemed certain that firms like his – with an expertise at finding and developing land – would become increasingly successful. ***The company expects to grow by 20 percent for the next two years and then will strive for 15 percent annually after that***." Compare these to the following statements regarding goals for FY 2007 and beyond in the May 10, 2005 conference call and FY 2006 net income guidance in the August 25, 2005 earnings press release:

"STEPHEN EAST: That is all right. Just one last question, your last controlled [*sic*] increased 17% 18%. Is that a rate that we should expect over the next few years? ROBERT TOLL: I would like to say I hope so. We want to increase at a minimum of 15%. That is our minimum goals [*sic*] for growth." ("Toll Brothers Second Quarter Preliminary Outlook Conference Call - Final (Part 1)," *FD (Fair Disclosure) Wire*, May 10, 2005.);

"These dynamics have put us on track for,…we believe, assuming continued healthy demand, approximately 20% net income growth in both FY 2006 and FY 2007." ("Toll Brothers' Record FY 2005 3rd Qtr Earnings Rise 103 Percent to $215.5 Million," Toll Brothers Press Release, August 25, 2005.)

[77] Bloomberg.

APPENDIX B: Analysis of Purported Corrective Disclosures

1. As discussed in Section V of my declaration, Plaintiffs claim that the "truth" about Toll Brothers' alleged misrepresentations came out in a series of purported disclosures on August 4, August 25, October 3, and November 8, 2005. Specifically, they allege that the following purported disclosures were made:[78]

   a. Robert Toll's statement during a conference call on August 4, 2005 that "[w]e do see cooling in some local markets that were overheated just a few months ago";

   b. Robert Toll's statement during an August 25, 2005 conference call that traffic "has been down 10% to 20% per community going back for almost a quarter and a half";

   c. Robert Toll's statement during an interview published in *USA Today* on October 3, 2005 that there was a "general slowdown in most of the markets" and he expected a 10% slowdown in orders; and

   d. The company's announcement on November 8, 2005 that it would provide an updated FY 2006 net income growth guidance on December 8, 2005.

2. Professor Finnerty purports to analyze Toll Brothers' stock returns on each of the four alleged corrective disclosure dates to determine "whether the share price declines can reasonably be attributed to the fraud-related news events."[79] However, as discussed in Section III of my declaration, Professor Finnerty does not make the basic and crucial comparison between the FY 2006 net income guidance provided during the Alleged Class

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[78] Amended Complaint ¶¶ 96, 106, 125, and 130.

[79] Finnerty Declaration, ¶ 83.

Period and the net income guidance provided at the close of the Alleged Class Period. As I explained in Section III, this comparison reveals that, contrary to Plaintiffs' claims, purported corrective disclosures of the alleged misrepresentations in the Amended Complaint could not have caused any declines in Toll Brothers' stock price. Professor Finnerty simply has no basis to attribute any stock price declines he observes to "fraud-related news events."

3. Even if one were to overlook this major conceptual oversight, Professor Finnerty's analysis suffers from several additional flaws that render his conclusions invalid. Specifically:

a. As Professor Finnerty testified in his deposition, he analyzes the stock movements resulting from the totality of the news announcements on the alleged corrective disclosure dates, without disaggregating the effect of the purported corrective disclosures in the Amended Complaint.[80] Thus, he fails to establish that any of the stock declines experienced by Toll Brothers on the alleged corrective disclosure dates are related to the purported corrective disclosures in the Amended Complaint.

b. Despite testifying that "bad news doesn't always reveal prior information to be false,"[81] he overlooks the fact that the alleged corrective disclosures

[80] "Q. You're not offering an opinion on whether any particular piece of information was corrective, is that correct? … A. I'm not…. Q. When you say you're not rendering an opinion on whether or not specific items caused the decline, does that mean you haven't tried to determine whether any particular piece of news caused the decline, is that correct? A. That's correct…." Finnerty Deposition, at 166:14-167:11.

[81] "Q. Would you agree a disclosure can have a negative effect on a company's stock price without having a corrective effect? … A. Yes. Q. What's the difference between a negative effect and a corrective effect on a company's stock price? A. If a company reports disappointing earnings, then the stock price will react negatively, there is a wealth of evidence that supports that and that's not a disclosure that's corrective, it's just a result of fact that that particular information is regarded negatively by the marketplace. Q. Is another way of saying that that bad news doesn't always reveal prior information to have been false? A. That's correct." Finnerty Deposition, at 108:13-109:8. "Q. I think you

were consistent with contemporaneous developments in the homebuilding industry that were previously unknown and unknowable.

c. He erroneously assumes in his declaration that the alleged August 4, 2005 disclosure was made after market close on that day when it was in fact made during trading hours. He then conceded in his deposition that the alleged disclosure was made before market close and that therefore its impact on Toll Brothers' stock price "would have occurred on August 4."[82] However, according to his own event study, Toll Brothers' stock return on August 4, 2005 was not statistically significant.[83] Thus, his own analysis indicates that the alleged August 4, 2005 disclosure did not cause a decline in Toll Brothers' stock price.

d. Consistent with analyst commentary on the causes of Toll Brothers' stock price decline on August 25, 2005, he suggests that the decline can be attributed to the company's commitment to its FY 2006 net income growth guidance of 20%, a level substantially lower than market expectations at the time. Yet, he overlooks the fact that the company's commitment to the very guidance that Plaintiffs claim inflated its stock price cannot, as an economic matter, reasonably be construed as a

said in your prior testimony that you would agree that the mere fact that a company revises its guidance does not alone indicate fraud, is that correct? A. Yes that's correct." Finnerty Deposition, at 170:23-171:3.

[82] "Q. What would have affected the market price, the earnings release by the company or Bloomberg's report of that release? A. Well, it would be the earnings released by the company. Q. Which would have occurred before the trading day on August 4th, correct? A. That's correct. Q. So is it still your opinion that the earnings release on August 4th was a cause of the decline in Toll Brothers' stock on August 5th? A. No. That impact would have occurred on August the 4th and the other items would have accounted for what occurred on August 5th." Finnerty Deposition, at 154:14-155:5.

[83] Finnerty Declaration, Exhibit F, p. 5.

revelation of “information that was not disclosed or was improperly disclosed in the early part of the class period.”[84]

e. He overlooks the fact that Toll Brothers’ stock price declines on October 3 and November 8, 2005 were most likely caused by a decline in market expectations, which were substantially higher than company guidance, to a level closer to—albeit still above—company guidance, and thus cannot be attributed to a revelation of any alleged misrepresentations in company guidance.

4. I discuss these flaws in Professor Finnerty’s analysis in detail below.

August 4, 2005

5. Before market open on August 4, 2005, Toll Brothers released revenue, contract, and backlog figures for the third quarter of FY 2005 – which covered May, June and July 2005. The company held a conference call with analysts and investors at 2 pm on the same day. Plaintiffs allege that Robert Toll’s comment during the conference call that “[w]e do see cooling in some local markets that were overheated just a few months ago” constituted a “partial revelation of previously misrepresented or concealed information.”[85] Professor Finnerty cites this and Robert Toll’s remark in the same conference call that “[i]nstead of selling out communities too quickly, we’ve chosen to ration our supply to maximize profit” as comments that “provided a weaker case for future growth.”[86] However, in his declaration, Professor Finnerty claims that the

[84] Finnerty Deposition, at 111:3-6.

[85] Amended Complaint, ¶ 154.

[86] Finnerty Declaration, ¶ 85.

earnings release and the conference call occurred "[a]fter the close of trading on August 4, 2005" and analyzes Toll Brothers' stock return on August 5, 2005 to purportedly determine the impact of the alleged corrective disclosures on August 4, 2005.[87] Because his event study yields a statistically significant stock price decline on August 5, 2005, he attributes this decline to "fraud-related news events."

6. Professor Finnerty conceded in his deposition that the alleged disclosures were made before market close and that therefore their impact on Toll Brothers' stock price "would have occurred on August 4." He further testified that news that is not alleged to be a corrective disclosure by the company accounted for the August 5, 2005 stock price decline.[88] A review of Professor Finnerty's event study results indicates that Toll Brothers did not experience a statistically significant stock price decline on August 4, 2005.[89] Hence, Professor Finnerty's conclusion that the alleged August 4, 2005 disclosures caused a statistically significant decline in Toll Brothers' stock price is erroneous. Based on his own event study, the August 4, 2005 disclosures did not materially change the company's stock price.

7. Furthermore, to the extent that Professor Finnerty attributes the stock price decline on August 5, 2005 to a downgrade of Toll Brothers' stock by Wachovia

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[87] Finnerty Declaration, ¶ 45. Professor Finnerty's purported "loss causation" analysis appears to be based on an assumption that, like the earnings release and conference call on August 4, 2005, Toll Brothers' earnings release and conference call on August 25, 2005 also contained alleged corrective disclosures. As on August 4, the earnings report on August 25, 2005 was released prior to market open and the conference call started at 2 pm. To purportedly determine the impact of the alleged August 25, 2005 disclosures, Professor Finnerty analyzes Toll Brothers' stock return on August 25, 2005.

[88] "Q. What would have affected the market price, the earnings release by the company or Bloomberg's report of that release? A. Well, it would be the earnings released by the company. Q. Which would have occurred before the trading day on August 4th, correct? A. That's correct. Q. So is it still your opinion that the earnings release on August 4th was a cause of the decline in Toll Brothers' stock on August 5th? A. No. That impact would have occurred on August the 4th and the other items would have accounted for what occurred on August 5th." Finnerty Deposition, at 154:14-155:5.

[89] Finnerty Declaration, Exhibit F, p. 5.

Securities,[90] or to other analyst reactions to the company's August 4, 2005 announcement,[91] Plaintiffs do not claim in the Amended Complaint that these announcements were corrective of the company's prior statements about its growth prospects, and he cannot reasonably make that claim either. Specifically, the Wachovia report indicated that the key reasons for the downgrade were data from a survey conducted by Wachovia itself and the valuation multiples at which Toll Brothers stock was trading with respect to comparable company stocks, not any announcements by the company on August 4, 2005.[92] In fact, according to documents cited by Professor Finnerty, Wachovia raised its FY 2006 net income estimate by $17 million from $877.60 million to $894.70 million following the company's August 4, 2005 announcement.[93] In addition, none of the other analyst reports on Toll Brothers that were issued on August 4 and August 5, 2005 either downgraded the company's stock or decreased their earnings estimates. On the contrary, they remained optimistic about the stock, with several raising their earnings estimates.[94]

[90] Finnerty Declaration, ¶ 85. "Q. Let's talk first about August 5, 2005, so if you would turn in your report to paragraphs 45 and 46, in paragraph 46, you concluded there was a statistically significant negative abnormal return of minus 2.92 percent on August 5th, correct? A. Yes. Q. You attribute that abnormal negative return on August 5th to a release of earnings by the company and a downgrade by Wachovia, is that correct? A. Yes." Finnerty Deposition, at 149:15-150:2.

[91] "Q. The other item [on August 5] is the Wachovia report, correct? A. …[T]here are a whole variety of securities analysts reacting on August 5th, the market was down 2.92 percent abnormal on that day and it was the result of the interpretations of the earnings release rather the earnings release itself." Finnerty Deposition, at 155:6-156:6.

[92] "…[T]he key reasons for our downgrade are (1) relative valuation - TOL trades at a 37% premium to our coverage universe (near a 7-year high) and (2) data from our July Neighborhood Watch Survey which indicates a slowing Washington DC market." Wachovia Securities, "TOL: Downgrading To Market Perform," August 4, 2005, cited in Finnerty Declaration, FN 44.

[93] Wachovia Securities, "TOL: Downgrading To Market Perform," August 4, 2005, cited in Finnerty Declaration, FN 44. Wachovia Securities, "TOL: Q205 EPS Of $2.01 Exceeds Our $1.79 Estimate," May 26, 2005, cited in Finnerty Declaration, Exhibit G.

[94] AG Edwards, "Charts of Toll's new orders that were just reported," August 4, 2005. Citigroup, "TOL: Increasing FY05 And FY06 Based On Strong 3Q05 Revenues," August 4, 2005, cited in Finnerty Declaration, Exhibit G. JP Morgan, "Strong 3Q Orders, Higher than Expected Closings; Reiterate Overweight," August 4, 2005, cited in Finnerty Declaration, Exhibit G. Merrill Lynch, "Same Great Story," August 4, 2005. UBS, "F3Q05 Orders, Closings, and Backlog," August 4, 2005. BB&T Capital Markets, "TOL: Orders Up 19% from Q3'04 to the Second-Highest

8. Furthermore, the Homebuilders Market Index (HMI), which is a quantitative measure of housing activity that summarizes a monthly survey of homebuilders by the National Association of Home Builders ("NAHB"), indicates the real estate market did indeed experience some "cooling" in the third quarter of FY 2005. The HMI is charted in Exhibit 5 from December 2004 to November 2005. As shown in Exhibit 5, the index peaked in June 2005 and started to decline thereafter.[95] In other words, Robert Toll's statement that there was "cooling in some local markets" was consistent with contemporaneous market developments and cannot reasonably be construed as a revelation of previously known but undisclosed information. As Professor Finnerty himself testified, "bad news doesn't always reveal prior information to be false."[96] Thus, neither Plaintiffs nor Professor Finnerty can reasonably conclude that "fraud-related news events" caused any decline in Toll Brother's stock price on either August 4, 2005 or August 5, 2005.

August 25, 2005

9. On August 25, 2005, Toll Brothers announced its net income for the third quarter of FY 2005 and held a conference call with analysts and investors. During the call,

Quarterly Level," August 5, 2005, cited in Finnerty Declaration, Exhibit G. Janney Montgomery Scott, "Fine Tuning Estimates Leads to Slight Increase in EPS Forecast," August 5, 2005, cited in Finnerty Declaration, Exhibit G. Lehman Brothers, "Raising Est, Tgt on 3Q Rev/Orders," August 5, 2005. Raymond James, "TOL: Strong Preliminary F3Q05 Results, Raising Estimates," August 5, 2005. Susquehanna Financial Group, "Solid Revenue and Orders Pave the Way for Estimate Increases; Reiterate Positive Rating," August 5, 2005.

[95] Note that the July and August HMI numbers were reported on July 18 and August 15, 2005, respectively, by the NAHB. "Builder Confidence Holds Up Well in July," NAHB, July 18, 2005; "Builder Confidence Remains Strong," NAHB, August 15, 2005.

[96] "Q. Would you agree a disclosure can have a negative effect on a company's stock price without having a corrective effect? … A. Yes. Q. What's the difference between a negative effect and a corrective effect on a company's stock price? A. If a company reports disappointing earnings, then the stock price will react negatively, there is a wealth of evidence that supports that and that's not a disclosure that's corrective, it's just a result of fact that that particular information is regarded negatively by the marketplace. Q. Is another way of saying that that bad news doesn't always reveal prior information to have been false? A. That's correct." Finnerty Deposition, at 108:13-109:8.

Robert Toll indicated that traffic “ha[d] been down 10% to 20% per community going back for almost a quarter and a half.” Plaintiffs allege that this statement was a partial revelation of previously misrepresented or concealed information.[97] In his discussion of August 25, 2005, Professor Finnerty cites this statement as one of the comments made on that day that were “less bullish.”[98] He quotes a comment by Wachovia Securities “that housing dynamics in TOL’s Mid-Atlantic sweet spot are slowing,” and indicates “[a]n Associated Press article included a quote from earlier in the month when CEO Robert Toll told analysts ‘that while housing remains hot, there are signs of slowing. In some markets it’s taking a bit longer to sell and price increases have been smaller.’”[99] He then points out that “JPMorgan noted that order growth was below their expectations and guidance for FY06 was ‘conservative,’” and that “[a]t Credit Suisse First Boston, the analyst was impressed with the earnings report, but was wary of growth estimates and how that would affect future earnings. While Toll Brothers maintained its 20% net income growth forecast, the Street had been expecting 27% EPS growth for 2006.”[100] Professor Finnerty’s event study yields a statistically significant decline in Toll Brothers’ stock price on August 25, 2005. He concludes that “news regarding the finalized third quarter results substantially caused the -3.04% abnormal return on August 25, 2005.”[101]

10. Professor Finnerty’s analysis merely establishes that Toll Brothers’ stock price declined on August 25, 2005 as a result of the totality of the news announced on that day,

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[97] Amended Complaint, ¶ 155.

[98] Finnerty Declaration, ¶ 88.

[99] Finnerty Declaration, ¶ 88.

[100] Finnerty Declaration, ¶ 89.

[101] Finnerty Declaration, ¶ 90.

without disaggregating the effect, if any, of any particular piece of information.[102] Specifically, he does not make any effort to determine whether any of the decline can reasonably be attributed to Robert Toll's statement during the 2 pm conference call that traffic "ha[d] been down 10% to 20% per community going back for almost a quarter and a half," which Plaintiffs allege was the corrective disclosure made on that day. In fact, a review of analyst reactions to the news released on August 25, 2005 leads to the conclusion that investors most likely did not view Robert Toll's statement about traffic as material new information.

11. Robert Toll followed the statement in question by commenting that:

> With respect to sales, however, that being non-binding reservation deposits, it pretty much looks like we're setting records for the last month and a half, with a couple of weeks excepted. Maybe a little longer than that.[103]

He further clarified that:

> A lot of our communities are now on an invitation-only basis. You phone in your interest, and send in a deposit, a reservation deposit, and then we call you within which – within the order that we receive the reservation deposits. So the community is basically closed, and we'll open it up, bring in five people only by appointment, sell them, then it's closed again, so that's probably a good explanation as to the imbalance between traffic and deposits.[104]

12. Robert Toll's explanation is consistent with my understanding of Toll Brothers' home sale and delivery process. I understand that in situations when Toll Brothers closed

[102] "Q. You're not offering an opinion on whether any particular piece of information was corrective, is that correct? … A. I'm not…. Q. When you say you're not rendering an opinion on whether or not specific items caused the decline, does that mean you haven't tried to determine whether any particular piece of news caused the decline, is that correct. A. That's correct…." Finnerty Deposition, at 166:14-167:11.

[103] "Q3 2005 Toll Brothers Earnings Conference Call – Final," *FD (Fair Disclosure) Wire*, August 25, 2005.

[104] "Q3 2005 Toll Brothers Earnings Conference Call – Final," *FD (Fair Disclosure) Wire*, August 25, 2005.

communities to traffic, placed potential buyers on waiting lists and collected non-binding reservation deposits from them, it was possible for non-binding reservation deposits to increase at the same time that traffic was declining.[105]

13. In order to determine whether analysts that specialized in following the homebuilding industry also found Robert Toll's explanation reasonable, I have reviewed analyst reports issued subsequent to the August 25, 2005 conference call. None of the reports I reviewed questioned the validity of Robert Toll's explanation. Nor did they focus on Robert Toll's comments on the 10% to 20% decline in traffic in setting their FY 2006 earnings estimates or determining their recommendation about the stock. In fact, a Merrill Lynch analyst commented:

> Traffic per community is down 10-20% from last year. This is attributable to the fact that many of Toll's communities currently have waiting lists, with model viewing by invitation only.[106]

Similarly, an AG Edwards analyst noted:

> Given that the company's sales pace improved throughout the quarter, we are not overly concerned that traffic declined 10-20% on a per community basis in Q3. We find management's explanation plausible that internal restrictions on sales due to extended backlogs accounted for the lower number of home shoppers.[107]

14. Thus, market participants appear not to have regarded Robert Toll's statement about traffic as material new information. In contrast, both Professor Finnerty's

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[105] During the February 8, 2005 preliminary earnings conference call, Robert Toll explained the invitation-only basis for closed communities. He said, "…when we get to the 12-month delivery line, we don't put anything up for sale, we just take non binding reservation deposits for people to get in line to be called to come in to sign contracts when we feel that we can complete the homes within 12 months." ("Toll Brothers First Quarter Preliminary Outlook Conference Call – Final," *FD (Fair Disclosure) Wire,* February 8, 2005.)

[106] Merrill Lynch, "Bigger 2005 Equals Bigger 2006 Guidance," August 25, 2005.

[107] AG Edwards, "And the Beat Goes On," August 26, 2005, cited in Finnerty Declaration, Exhibit G.

discussion and analyst commentary suggest that the decline in Toll Brothers' stock price on August 25, 2005 was likely caused by the company's commitment to its 20% FY 2006 net income growth guidance on that day despite the fact that this was substantially below analyst expectations. Professor Finnerty refers to JPMorgan noting that "order growth was below their expectations and guidance for FY06 was 'conservative.'" In discussing comments made by a Credit Suisse First Boston analyst, he points out that "[w]hile Toll Brothers maintained its 20% net income growth forecast, the Street had been expecting 27% EPS growth for 2006."[108] In addition, Professor Finnerty testified that the announcement by a company of an expected growth rate that is lower than investor expectations at the time would cause a drop in the company's stock price.[109]

15. Consistent with this, a Wachovia analyst noted:

> Perhaps TOL is also attempting to reset some more aggressive Street expectations. With EPS growth likely to exceed 75% in 2005, TOL is poised to post the strongest EPS growth of the eleven companies in our coverage universe. What this also means is that TOL will have the most difficult EPS comp in our coverage universe in 2006.[110]

An AG Edwards analyst commented on August 26, 2005:

> A point of consternation for many investors (and likely the reason for the sell-off in the shares) was that the company continues to adhere to

[108] Finnerty Declaration, ¶ 89.

[109] "Q. Whether it's the company forecasts or the analyst forecasts, the investors are trying to figure out in real dollar terms what those percentages mean, is that correct? A. Trying to figure out what the shares are worth so they're trying to figure out what the percentages mean in terms of the value of shares, so if the share value has built into a 20 percent growth forecast that the company says they forecast, 20 percent growth[,] share price won't change, but if the investors are expecting 25 percent and the company said no, it's only going to be 20[,] share price will drop." Finnerty Deposition, at 174:7-20.

[110] Wachovia Securities, "TOL: Q3 EPS of $1.27 Exceeds Our $1.18 Estimate," August 25, 2005, cited in Finnerty Declaration, FN 50.

> what many investors consider an overly conservative 20% net income growth projection for FY06.…[111]

16. Clearly, the company's commitment to the very guidance that Plaintiffs allege misrepresented its growth prospects cannot, as an economic matter, to be construed as a revelation of "information that was not disclosed or was improperly disclosed in the early part of the class period."[112]

17. Further, to the extent that Professor Finnerty suggests the stock price decline on August 25, 2005 is attributable to the Wachovia analyst comment that "housing dynamics in TOL's Mid-Atlantic sweet spot are slowing," Plaintiffs do not allege in the Amended Complaint that this comment constituted a corrective disclosure. The comment was not based on any company announcements. Wachovia commented specifically that "*our data … reflects that* housing dynamics in TOL's Mid-Atlantic sweet spot are slowing…." (emphasis in italics added).[113] The quote Professor Finnerty cites from an Associated Press article published on August 25, 2005 was also not alleged by Plaintiffs to be a corrective disclosure in the Amended Complaint, and was "from earlier in the month," thus providing no new information to investors.[114] If Toll Brothers stock traded in an efficient market, as Professor Finnerty claims, stale news "from earlier in the month" could not have moved the stock price on August 25, 2005.[115]

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[111] AG Edwards, "And the Beat Goes On," August 26, 2005, cited in Finnerty Declaration, Exhibit G.

[112] Finnerty Deposition, at 111:3-6.

[113] Wachovia Securities, "TOL: Q3 EPS of $1.27 Exceeds Our $1.18 Estimate," August 25, 2005, cited in Finnerty Declaration, FN 50.

[114] Finnerty Declaration, ¶ 88.

[115] "[I]n an efficient market, a stock's price remains relatively stable in the absence of news, and changes very rapidly as the market receives new and unexpected information." *Elmer Krogman v. R. Dale Sterritt, Jr.*, 202 F.R.D. 467 (N.D. Tex. 2001), cited in Finnerty Declaration, FN 10.

18. Thus, neither Plaintiffs nor Professor Finnerty have any basis to conclude that Toll Brothers' stock price decline on August 25, 2005 is attributable to "fraud-related news events."

October 3, 2005

19. Plaintiffs allege that Robert Toll's statement in an interview published in *USA Today* on October 3, 2005 about a "general slowdown in most of the markets" and his expectation of a 10% slowdown in orders constitute a partial disclosure of the purported misrepresentations.[116] While Professor Finnerty's event study shows a significant decline in Toll Brothers' stock price on that day, Professor Finnerty attributes this reaction not just to the *USA Today* article, but also to an article titled "Are McMansions Going Out of Style?" that was published in *The New York Times* on Sunday, October 2, 2005. According to Professor Finnerty, the article "discussed the changing preferences of the American home buyer," cited "the end of a thirty-year period of growth for the size of the average American home," and pointed out "that Toll Brothers, singled out as a builder of homes in affluent areas, could be facing waning demand for bigger houses given the trend."[117] Professor Finnerty does not establish any link between either the *New York Times* article or the *USA Today* article and any particular alleged misrepresentation in this case. Nor does he make any effort to disaggregate the impact of the *New York Times* article. In fact, Professor Finnerty testified that he has not tried to parse out the impact of the *New York Times* article from that of the *USA Today* article, and that "it would be

[116] Amended Complaint, ¶ 27.

[117] Finnerty Declaration, ¶ 91.

virtually impossible" to do so.[118] Thus, Professor Finnerty cannot establish that Toll Brothers' stock price decline on October 3, 2005 is attributable to "fraud-related news events."

20. Further, even if one were to assume that the stock price decline on October 3, 2005 was caused, in part, by Robert Toll's statement in the *USA Today* article about a "general slowdown in most of the markets" and his expectation of a 10% slowdown in orders, neither Plaintiffs nor Professor Finnerty have demonstrated how Defendants could have known prior to October 3, 2005 that a 10% slowdown in contracts would be expected as of October 3, 2005. As Professor Finnerty testified and I discussed above, "bad news doesn't always reveal prior information to be false."[119]

21. Commentary by industry associations indicates that there was a marked change in the outlook for the industry in September and October 2005. For example, an NAHB report published on September 19, 2005 stated:

> "Many builders appear to be taking on a more cautious attitude because of uncertainties in the economy and this post-Katrina environment, particularly with regard to sales expectations in the near

[118] "Q. Is it your opinion that Toll Brothers' stock price declined [*sic*] on October 3, 2005 is attributable, in part, to the October 2nd New York Times article? A. Could be. There is also the interview with Ron Insana, so I haven't tr[ied] to parse out the impact between the New York Times article and the interview with Insana and all the analysts who reacted to both of those items of information, but it's part of the mix. Q. You haven't tried to determine whether any of these particular pieces were corrective, rather than just negative, correct? A. I think they're part, in my view, part of the corrective mix. What I haven't tried to do is figure out what part of the impact that I measured is directly attributable to each of those separately. I think it's part of the mix. When I'm interpreting a corrective disclosure and measuring the impact, I'm taking the corrective information as a body of information, I'm not trying to separate out its impact of individual items. Q. Could you do that if you were asked to? A. I think with that number of announcements, I think it would be virtually impossible because the only way one can really separate it is by being able to distinguish separate impacts, in other words, one would have to see an announcement, get enough of a time period to measure the impact before the next one occurs and given the large number, I'm not sure it would be feasible to do that." Finnerty Deposition, at 168:18-170:7.

[119] "Q. Would you agree a disclosure can have a negative effect on a company's stock price without having a corrective effect? … A. Yes. Q. What's the difference between a negative effect and a corrective effect on a company's stock price? A. If a company reports disappointing earnings, then the stock price will react negatively, there is a wealth of evidence that supports that and that's not a disclosure that's corrective, it's just a result of fact that that particular information is regarded negatively by the marketplace. Q. Is another way of saying that that bad news doesn't always reveal prior information to have been false? A. That's correct." Finnerty Deposition, at 108:13-109:8.

> term," observed Dave Wilson, NAHB president and a custom home builder from Ketchum, Idaho.
>
> "As expected, the housing market is beginning to show signs of cooling and builders are reacting to that," agreed NAHB Chief Economist David Seiders.[120]

22. In a report published after Toll Brothers' August 25, 2005 earnings conference call, Banc of America Securities expected Toll Brothers' FY 2006 net income to be $1.08 billion, which represented 43% growth over FY 2005 expected net income.[121] The analyst stated there was "upside in the homebuilders based on the positive secular trends and reasonable valuations, which should offset the challenges from modestly rising rates."[122] However, on September 23, less than one month later, Banc of America Securities revised price targets downward for twelve homebuilders, including Toll Brothers.[123] Similarly, A UBS industry analyst commented on October 31, 2005:

> As outlined in our 10/17 report entitled 'Expect Another Soft Landing', we believe unit home sales will decline 10% in 2006, as mortgage rates rise and lower affordability tempers demand. With a combined share of just 23% of the single-family housing market in 2005, however, we believe the public builders will continue to deliver double-digit sales growth despite the slower macro economic backdrop.[124]

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[120] NAHB, "Home Builder Optimism Edges Down Further In September," September 19, 2005.

[121] Showing its optimism in Toll Brothers' outlook, the Banc of America Securities report referenced Robert Toll's comment during the conference call that the company's non-binding reservation deposits were setting records during the last month and a half of the quarter. Note that this comment immediately followed the comment about traffic that Plaintiffs claim was a partial disclosure: "I have the old traffic sheet right here. With respect to traffic, on a per-community basis, traffic has been down from last year, and on average, it just -- just eye-balling this, it seems to me as though it has been down 10% to 20% per community going back for almost a quarter and a half. With respect to sales, however, that being non-binding reservation deposits, it pretty much looks like we're setting records for the last month and a half, with a couple of weeks excepted. Maybe a little longer than that." ("Q3 2005 Toll Brothers Earnings Conference Call – Final," *FD (Fair Disclosure) Wire*, August 25, 2005; Amended Complaint, ¶ 106, ¶ 129.)

[122] Banc of America Securities, "Demand Improving, In Contrast with Media Reports, Reiterate Buy," August 25, 2005.

[123] "Research Alert – BofA Revises 12 Homebuilders' Price Targets," *Reuters News*, September 23, 2005.

[124] UBS, "Capital Discipline Through Share Buybacks," October 31, 2005.

23. The deposition testimony of the investment manager for one of the Lead Plaintiffs during the Alleged Class Period similarly portrays a change in the outlook for the homebuilding industry in late 2005. Michael Jensen Borgen, a Senior Portfolio Manager at Navellier & Associates, which was the investment manager to Lead Plaintiff City of Hialeah Employees' Retirement System during the Alleged Class Period, wrote in an email describing his reasons for purchasing Toll Brothers stock:

> …[U]nfortunately, what we could not predict was a dramatic slowdown in the economy, the popping of the housing bubble, and an extraordinary slowdown in sales and earnings.[125]

Mr. Borgen testified at deposition that the decline in Toll Brothers' stock price was attributable to economic developments that also caused other homebuilding stocks to decline. He explained:

> It's after the fact that we are able to identify why a stock went up or why a stock went down. Hindsight is 20/20, so after the fact, it's easy to see that a slowdown in the overall economy and a popping of the housing bubble caused dramatic slowdown of sales and earnings of Toll Brothers, which we didn't know at the time.[126]

According to Mr. Borgen, the fact that Navellier did not predict this "dramatic slowdown" was not attributable to any actions by Toll Brothers.[127]

24. Macroeconomic indicators of consumer demand also declined during the fourth quarter of FY 2005, suggesting that demand was changing as a result of unpredictable, economy-wide factors. For example, as shown in Exhibit 6, consumer confidence indices

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[125] Borgen Deposition, at 104:14-17.

[126] Borgen Deposition, at 106:1-7.

[127] "Q. Do you attribute the fact that Navellier's model didn't predict the dramatic slowdown to anything that Toll Brothers did? A. No." Borgen Deposition, at 106:15-18.

measured by the University of Michigan and the Conference Board dropped sharply in September 2005 and reached their Alleged Class Period minimum in October 2005. This suggests that the slowdown in orders predicted by Robert Toll on October 3, 2005 was consistent with contemporaneous economic developments that were previously unknown and unknowable, and did not constitute a revelation of previously concealed information.

25. Consistent with the change in the outlook for the homebuilding industry, analysts' consensus estimate for Toll Brothers' FY 2006 net income declined from $983.90 million in mid-September 2005 to $967.31 million in mid-October 2005. Even if one were to assume that the stock price decline on October 3, 2005 is attributable to this decline in investor expectations, the mid-October consensus estimate was more than $80 million above the company's guidance of $883.68 million at the time. As Professor Finnerty testified, analyst views can move a company's stock price independent of the company's representations.[128] Hence, the decline in investor expectations cannot reasonably be attributed to any alleged misrepresentations by the Defendants.

November 8, 2005

26. On November 8, 2005, Toll Brothers announced that it would provide an updated FY 2006 net income guidance on December 8, 2005.[129] Plaintiffs allege that this

[128] "Q. So analyst's estimates can cause movement in the company's stock price that is independent of anything the company says, is that correct? A. It could. I don't think that's what's at work here. If an analyst forms a different view from what the company said, if that change in the atmosphere was credible, that can effect the stock price. Q. Independent of what the company was saying? A. It can, yes. Q. If that were the case, there could be new information that's disclosed to the market that corrects what that analyst had been forecasting, is that correct? … A. Either correct it is or takes a different view, yes, there could be. Q. So there could be inflation in a company's stock price that's caused by what analysts are saying, is that correct? A. It's possible that if an analyst conveys information that may be wrong, but is viewed as credible at the time, that that could move the stock and that can then be corrected when the inflation comes out of the stock, it's possible. Q. It's later revealed that it was not credible, that new information could cause the inflation to come out of the stock price, is that correct? A. That's correct, it could happen." Finnerty Deposition, at 147:9-148:17.

[129] Toll Brothers provided the following explanation for the slowdown announced on November 8, 2005:

announcement constituted a disclosure of previous misrepresentations about the company's growth prospects. Professor Finnerty asserts that "[t]he revision to guidance for FY 2006 and the subsequent reports by stock analysts following the company in response to the revised guidance had a significant negative impact on Toll Brothers' common stock."[130] He concludes that these events substantially caused the decline in the stock price on November 8, 2005, which his event study finds to be statistically significant.

27. Professor Finnerty's conclusion that the decline in Toll Brothers' stock price on November 8, 2005 was likely attributable to a change in investors' perception of Toll Brothers' growth prospects does not automatically imply that, as an economic matter, the company previously misrepresented those prospects. As I discussed in Section IV of my declaration and as Professor Finnerty conceded in his deposition,[131] analysts independently developed FY 2006 net income estimates for Toll Brothers, which were substantially more aggressive than the guidance provided by the company. The analyst consensus estimate for FY 2006 net income was $967.31 million as of mid-October 2005. This exceeded the company guidance of $883.68 million at that time by more than $80 million. By mid-November 2005, the consensus estimate had declined to $897.15

> Since Hurricane Katrina in early September, we have observed buyers taking longer to make their purchasing decision. We attribute this change to the significant decline in consumer confidence in the last two months that was precipitated by the hurricanes and their aftermath, and to record gas prices.

This explanation is consistent with my review of developments in the homebuilding industry, as well as with the decline in consumer confidence observed in September and October 2005.

[130] Finnerty Declaration, ¶ 97.

[131] "Q. You agree that analysts collect and assessed [*sic*] information other than information that is provided by the companies they cover, correct? A. Yes. Q. You agree that based on the information that they collect and assess, analysts can reach a different conclusion than the company does about the company's expected growth, is that correct? A. Yes." Finnerty Deposition, at 197:21-198:7.

million, or by 7.25%. According to Professor Finnerty's event study, Toll Brothers had an abnormal stock price decline of 8.04% on November 8, 2005. This decline was more likely than not caused by the downward adjustment in investors' FY 2006 net income expectations to a level that was still above the guidance provided by the company prior to the end of the Alleged Class Period. In other words, Toll Brothers' stock price drop on November 8, 2005 most likely resulted from an alignment in investor expectations with the guidance provided by Toll Brothers. Plaintiffs have no basis to attribute the stock price drop to a revelation of any prior misrepresentations in the company's guidance.

Exhibit 1

MICHAEL R. GIBBONS
Curriculum Vitae

PERSONAL INFORMATION

Michael R. Gibbons
Born September 30, 1954
United States Citizenship
Married, two children

Business Address:
1000 Steinberg-Dietrich Hall
The Wharton School
The University of Pennsylvania
Philadelphia, Pennsylvania 19104-6367
Office Phone: (215)–898–3681
Office FAX: (215)–573–5001

Home Address:
506 Glenview Road
Bryn Mawr, Pennsylvania 19010
Home Phone: (610)–525–3064

EDUCATION

UNIVERSITY OF CHICAGO
Department of Economics

Ph.D., Economics, 1980.

Fields of Specialization Include: Econometrics (passed with distinction) and Financial Economics.

Dissertation: "Econometric Methods for Testing a Class of Financial Models — An Application of the Nonlinear Multivariate Regression Model."

Committee: Eugene Fama (Chairman), Jon Ingersoll, and Arnold Zellner.

M.S., Economics, 1979.

BUTLER UNIVERSITY
Department of Economics

B.S. (with highest honors in economics), summa cum laude, 1975.

AWARDS AND HONORS

Excellence in Teaching Award, 1996, 2001. Each year this award recognizes the eight faculty members who received the highest average teaching ratings over the last three semesters.

Finalist for the Helen Kardon Moss Anvil Award, 1993, 1996. Each year this is given to the professor who demonstrates outstanding teaching quality and effort.

The Batterymarch Financial Management Fellowship, 1983–1984. This fellowship was awarded to three faculty members who are to pursue major research projects in financial economics.

Roger F. Murray Prize (from the Institute for Quantitative Research in Finance) for "The Empirical Examination of the Return Generating Process of the Arbitrage Pricing Theory," 1983.

Phi Kappa Phi, 1975.

Top Ten Outstanding Male Students, 1975.

Rust Award for Highest Grade Point Average, 1975.

TEACHING AND RESEARCH EXPERIENCE

TEACHING AND RESEARCH POSITIONS:

I.W. Burnham II Professor of Investment Banking. The Wharton School. The University of Pennsylvania. 1989–.

Visiting Associate Professor of Finance and the CRSP Visiting Scholar. Graduate School of Business. The University of Chicago. 1988–1989.

Associate Professor of Finance (with tenure), Graduate School of Business, Stanford University, 1987–1989.

Associate Professor of Finance, Graduate School of Business, Stanford University, 1984–1987.

Assistant Professor of Finance, Graduate School of Business, Stanford University, 1980–1984.

Lecturer in Finance, Graduate School of Business, University of Chicago, 1979–1980.

Research Associate, Holcomb Research Institute, Butler University, 1975.

ADMINISTRATIVE POSITIONS:

Deputy Dean. The Wharton School. 2007-.

Advisory Committee to the President of the University of Pennsylvania for the Appointment of the Dean of the Wharton School. 2007.

Co-chair. Faculty Advisory Committee for Wharton Research Data Services (WRDS). The Wharton School. 2005–2007.

Faculty Advisory Committee for Executive Education. The Wharton School. 2005–2007.

Director. The Investment Strategist Certificate Program for the Investment Management Consultants Association (IMCA). 2003–2007.

Learning Lab Committee. The Wharton School. 2003–2007.

Director. Wharton-Merrill Lynch Investment Banking Institute. 2001–2007.

Faculty Advisory Board. The Rodney White Center. The Wharton School. 1992–2006.

Chairman. Department of Finance. The Wharton School. 1994–2006.

Advisory Committee to the President of the University of Pennsylvania for the Reappointment of the Dean of the Wharton School. 2005–2006.

International Advisory Board. Center for Financial Engineering. National University of Singapore. 1999–2002.

Strategic Planning Committee. The Wharton School. 1999–2000.

Director. Nomura Investment Management Program held in Singapore. (This program was a joint project between the Wharton School and the Institute of Banking and Finance in Singapore.) 1991–1995.

Dean's Advisory Council. The Wharton School. 1991–1993.

Advisory Committee on Faculty Personnel. The Wharton School. 1990–1993. (Chairman of the committee in 1992–1993.)

Co–director. International Investment Management Program. (This executive education program is sponsored jointly by the London Business School and Stanford University.) 1987–1989.

Liaison for Ph.D. Program in Finance. Graduate School of Business. Stanford University. 1981–1984.

EXECUTIVE EDUCATION:

The Investment Strategist Certificate Program for the Investment Management Consultants Association (IMCA). (This is a customized executive education program of the Wharton School.) 2003–2007.

Wharton-Merrill Lynch Investment Banking Institute. 2001-2007.

Morgan-Stanley Investment Consultant Program. (This is a customized executive education program of the Wharton School.) 1998–.

AIMSE Investment Institute. (This is a customized executive education program of the Wharton School.) 1995–.

NASD: Institute for Professional Development. (This is a customized executive education program of the Wharton School.) 2001.

Wharton-Singapore Management University Investment Management Program held in Singapore. 2001.

First Union Advanced Management Program for Overseas Bankers. (This was a customized executive education program of the Wharton School. The name of the sponsoring bank changed over time. Originally, it was hosted by Philadelphia National Bank, and for a short time Corestates sponsored the program.) 1991–2000.

Markets Training Program for JP Morgan. 1997–1998.

Wharton-National University of Singapore Banking and Risk Management Program held in Singapore. 1997.

Exhibit 1

Asian Securities Executive Program held in Kuala Lumpur and Manilla. (This program was sponsored jointly by Asian Securities Industry Institute and the Wharton School.) 1996–1997.

Daiwa Asset Management Program on Fixed Income Securities and Global Asset Allocation. (This was a customized executive education program of the Wharton School.) 1995, 1997.

Wharton-Andersen Consulting: Risk Management Program. 1996.

COFIDE Executive Education Program for Fixed Income Securities held in Lima, Peru. 1996.

Nomura Investment Management Program held in Singapore. (This was a customized executive education program of the Wharton School.) 1991–1995.

Capital, the Firm, and Economic Growth held in Shanghai. (This program was sponsored jointly by Shanghai Jiao Tong University and the Wharton School.) 1994.

Dean Witter-Wharton Program for Account Executives. 1993–1994.

Securities Industry Institute Program. (This is a customized executive education program of the Wharton School.) 1991–1994.

Seminarium Program in Finance held in Argentina, Chile, and Mexico. (This was a customized executive education program of the Wharton School.) 1993.

World Bank Program on Managing Financial Risk held in Bogota, Colombia. 1991.

International Investment Management Program held in London, England. (This program was sponsored jointly by the London Business School and Stanford University.) 1986–1989.

Financial Management Program. Stanford University. 1986–1989.

International Investment Management Program held in Geneva, Switzerland. (This program was sponsored jointly by the International Management Institute in Geneva and Stanford University.) 1983–1985.

COURSES TAUGHT:

Econometric Methods II: A course for Ph.D. students. The course covers asymptotic theory and maximum likelihood estimation, estimation of a system of simultaneous equations, and nonlinear methods.

Finance I: A course for first-year MBA students. The course surveys valuation, corporate finance, derivatives, and portfolio theory.

Financial Derivatives: A course for second-year MBA students. The course explains the theory of option pricing and various numerical techniques that are useful for implementing the theory in practice. The course describes the return and risk from holding options as well as the optimal time to exercise an American option. In addition, the course studies the application of the theory to various corporate securities including bonds with default risk, callable (or putable) bonds, convertible bonds, and warrants.

Fixed Income Securities: A course for second-year MBA students. The course surveys a number of securities—including government and corporate bonds, callable (or putable) bonds, floating rate notes, swaps, forwards and futures, bond options, caps, collars, and floors. The primary purpose of the course is to study valuation of fixed income securities, interest rate risk management, and the optimal time to refinance loans.

Foundations of Finance: A course for Ph.D. students. The course is an extensive survey of existing empirical studies in financial economics, empirical regularities of asset returns, and econometric methods useful in the study of financial data.

Investment Management: A course for first- and second-year MBA students. The course surveys various types of assets as well as valuation models. Many of the lectures are devoted to an explanation of modern portfolio techniques.

Time Series Analysis: A course for Ph.D. students. The course develops and applies econometric methods to analyze univariate and multivariate time series.

SERVICE TO SCHOLARLY JOURNALS AND ORGANIZATIONS

PAST REVIEWER FOR:
American Economic Review; Journal of Business; Journal of Econometrics; Journal of Economic Literature; Journal of Finance; Journal of Financial Economics; Journal of Financial and Quantitative Analysis; Journal of Forecasting; Journal of Monetary Economics; Journal of Money, Credit, and Banking; Journal of Political Economy; and Management Science.

ASSOCIATE EDITOR OF:

Journal of Financial and Quantitative Analysis, 1983–1987.
Journal of Finance, 1983–1987.
Journal of Financial Economics, 1982–1989.

EDITORIAL ADVISORY BOARD:
Asia Pacific Journal of Management, 1992–2001.

EDITOR OF:
Review of Financial Studies, 1987–1991.

DIRECTOR OF:
American Finance Association, 1986–1988.

RESEARCH EVALUATION:
National Science Foundation, 1982–88, 1990–93.

Program Committee for Annual Meeting of the Western Finance Association, 1983 to 1985, 1987, 1994.

MEMBER OF:

American Economic Association.
American Finance Association.
American Statistical Association.
Econometric Society.
Western Finance Association.

PROFESSIONAL ACTIVITIES

ADVISORY BOARDS:

Curriculum Advisory Board. Investment Management Consultants Association (IMCA). 2004–2005.

Faculty Advisory Board. Cornerstone Research. Menlo Park, California. 1991–1995.

Scientific Advisory Board. Wells Fargo Investment Advisors. San Francisco, California. 1981–82.

CONSULTING EXPERIENCE:

Expert testimony and litigation support.

Asset valuation and investment management.

PUBLISHED ARTICLES

"Forecasting Bond Returns." *Financial Times*. Series on Mastering Finance. 1997. (This article is reprinted in *The Complete Finance Companion* edited by George Bickerstaff and published by Pitman Publishing of London in 1998).

"A Test of the Cox, Ingersoll, and Ross Model of the Term Structure." *Review of Financial Studies* 6. 1993. Pages 619–658.
Co-author: Krishna Ramaswamy.

"A Test of the Efficiency of a Given Portfolio." *Econometrica* 57. 1989. (September): 1121–1152. (This article is reprinted in *Empirical Research in Capital Markets* edited by G.W. Schwert and C.W. Smith, Jr. published by McGraw-Hill in 1991).
Co-authors: Stephen Ross and Jay Shanken.

"Empirical Tests of the Consumption–Oriented CAPM." *Journal of Finance* 44. 1989. (June): 231–262. (This article is reprinted in *Empirical Research in Capital Markets* edited by G.W. Schwert and C.W. Smith, Jr. published by McGraw-Hill in 1991).
Co-authors: Douglas Breeden and Robert Litzenberger.

"On the Volatility of Bond Prices." *Carnegie–Rochester Conference Series on Public Policy* 31. 1989. Pages 139–176.

"Subperiod Aggregation and the Power of Multivariate Tests

of Portfolio Efficiency." *Journal of Financial Economics* 19. 1987. (December): 389–394.
Co-author: Jay Shanken.

"The Interrelations of Finance and Economics: Empirical Perspectives." *American Economic Review* 77. 1987. (May): 35–41.

"A Simple Econometric Approach for Utility–Based Asset Pricing Models." *Journal of Finance* 40. 1985. (June): 359–381. (This article is reprinted as Chapter 8 in *Frontiers of Finance: The Batterymarch Fellowship Papers* edited by D.H. Miller and S.C. Myers published by Basil Blackwell in 1990. In this book there is also a short note by me giving background and comments on this article.)
Co-author: David P. Brown.

"Testing Asset Pricing Models with Changing Expectations and an Unobservable Market Portfolio." *Journal of Financial Economics* 14. 1985. (June): 217–236.
Co-author: Wayne Ferson.

"A Comparison of Inflation Forecasts." *Journal of Monetary Economics* 13. 1984. (May): 327–348.
Co-author: Eugene Fama.

"Inflation, Real Returns, and Capital Investment." *Journal of Monetary Economics* 9. 1982. (May): 297–324.
Co-author: Eugene Fama.

"Multivariate Tests of Financial Models: A New Approach." *Journal of Financial Economics* 10. 1982. (March): 3–27.

"Day of the Week Effects and Asset Returns." *The Journal of Business* 54. 1981. (October): 579–596.
Co-author: Patrick Hess.

PUBLISHED NOTES AND COMMENTS

"Discussion of 'Stochastic Processes for Interest Rates and Equilibrium Bonds Prices.' " *Journal of Finance* 38. 1983. (May): 648–650.

"Discussion of the 'Ex-Dividend Behavior of Stock Returns: Further Evidence of Tax Effects.' " *Journal of Finance* 37. 1982. (May): 474–476.

Exhibit 2

Testimony of Professor Michael R. Gibbons Since 2006

In re: Enron Corporation Securities Litigation, Civil Action No. H-01-3624 (U.S. District Court, Southern District of Texas, Houston Division), Deposition Testimony, May 2006.

Harvey A. Lapin, Individually, and On Behalf of All Others Similarly Situated vs. Goldman Sachs Group, Inc., Goldman Sachs & Co. and Henry M. Paulson, Deposition Testimony, July 2007.

In re HealthSouth Securities Litigation, No. CV-03-BE-1500-S; In re HealthSouth Stockholder Litigation, No. CV-03-BE-1501-S; and *In re HealthSouth Bondholder Litigation*, No. CV-03-BE-1502-S, Deposition Testimony, April 2008.

Harvey A. Lapin, Individually, and On Behalf of All Others Similarly Situated vs. Goldman Sachs Group, Inc., Goldman Sachs & Co. and Henry M. Paulson, Deposition Testimony, April 2010.

Exhibit 3

Documents Considered for the Declaration of Professor Michael R. Gibbons

Legal Documents

The City of Hialeah Employees' Retirement System and Laborers Pension Trust Funds for Northern California vs. Toll Brothers, Inc., Bruce E. Toll, Robert I. Toll, Zvi Barzilay, Robert S. Blank, Joel H. Rassman, Richard Braemer, Paul E. Shapiro, Carl B. Marbach and Joseph R. Sicree, Amended Complaint for Violation of the Securities Exchange Act of 1934, August 13, 2007.

Deposition of Michael Jensen Borgen, April 20, 2010.

Deposition of Harvey Fram, April 28, 2010.

Memorandum of Law in Support of Lead Plaintiffs' Motion for Class Certification, May 14, 2010.

Declaration of John D. Finnerty in Support of Lead Plaintiffs' Motion for Class Certification, May 14, 2010, including documents cited and the back-up materials produced.

Deposition of John D. Finnerty, May 27, 2010.

News Articles

"Zacks.com Announces That Gregory Spear Highlights the Following Stocks: New Century Financial, D.R. Horton, Pulte Homes, Toll Brothers, and Ryland," *Business Wire*, September 1, 2004.

"Zacks Buy List Highlights: Tellabs, Toll Brothers, Harman International, and Pacific Sunwear," *Business Wire*, September 16, 2004.

"A NEW FRONTIER FOR SUBURBAN BUILDERS; Land scarcity has tract developers tackling blighted urban properties," *BusinessWeek*, September 20, 2004.

"Is the Housing Boom Over? Home prices have gone up for so long that people think they'll never come down. But the fundamentals tell a different story--a scary one," *Fortune*, September 20, 2004.

"US Home Builders Should Post 3Q Gains Despite Fla. Storms," *Dow Jones News Service*, September 24, 2004.

"New Home Builders and Product Manufacturers Prepare for Launch of Industry-Created Home Options Management Solution," *Business Wire*, September 29, 2004.

"Toll Brothers sees 30 pct earnings growth in 2005," *Reuters News*, October 5, 2004.

"UPDATE 1 - Toll Brothers sees 30 pct earnings growth in 2005," *Reuters News*, October 5, 2004.

"Housing industry set for trouble - Barron's," *Reuters News*, October 17, 2004.

Exhibit 3

"Zacks Buy List Highlights: General Maritime, Toll Brothers, ChevronTexaco, and Research In Motion," *Business Wire*, October 20, 2004.

"A Whole New Game: The pros are cautious about the economy, but still bullish on stocks," *Barron's*, October 25, 2004.

"Toll Brothers Says Demand For Its Pdts Was Strong In FY04," *Dow Jones News Service*, November 3, 2004.

"Toll forecasts '05 income growth of 30 pct plus," *Reuters News*, November 3, 2004.

"UPDATE 1 - Toll reiterates '05 income growth of 30 pct plus," *Reuters News*, November 3, 2004.

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Data

I/B/E/S

NAHB HMI Index

Bloomberg

Exhibit 4

Toll Brothers, Inc.
Finnerty Regression Results on Alleged Misrepresentation Dates

Source: Amended Complaint; Declaration of John D. Finnerty

Date	Description of Alleged Event from Amended Complaint		Finnerty Regression Result [1]	Reason for Lack of Evidence of Inflation [2]
12/9/04	"Toll Brothers issued a release officially reporting its 4Q F04 and F04 results, stating '…[W]e believe we are positioned to produce net income and revenue growth of at least 20% in Fiscal 2006 and subsequent years.' Later in the day..., Toll Brothers held a telephone conference call for analysts to discuss its business and its 4Q F04 and F04 results. During the call, Robert Toll told analysts that demand remained 'tremendous' for Toll Brothers homes and that the Company would add twenty new active selling communities during F05."	Actual Return Finnerty Abnormal Return Finnerty Significance	12.71% 7.48% *	Confounding News (Earnings Announcement)
2/8/05	"Toll Brothers preliminarily reported results for 1Q F05...and held a conference call for analysts to discuss its 1Q F05 results and future prospects….[stating,] '[W]e are very optimistic about a great start to fiscal 2006….' Rassman was interviewed on Bloomberg….[stating,] '[D]emand remains very robust.'"	Actual Return Finnerty Abnormal Return Finnerty Significance	4.20% 1.93% *	Confounding News (Earnings Announcement)
2/23/05	"Toll Brothers reported its 1Q F05 results….[stating,] '[W]e believe we are well-positioned for continued growth in the years ahead.' Toll Brothers held a conference call for analysts to discuss its business and its 1Q F05 results….[stating,] 'Due to this demand… we believe fiscal 2006 will be another record year….' Robert Toll appeared on *Fox: Your World* …CNBC…[and] Bloomberg….[stating,] '[W]e don't see any abatement. The market appears to be…strong….'"	Actual Return Finnerty Abnormal Return Finnerty Significance	3.96% 3.14% *	Confounding News (Earnings Announcement)
5/10/05	"Toll Brothers issued a release reporting its results for 2Q F05….[stating,] 'Demand for luxury homes remains strong, and we continue to enjoy solid pricing power….' Toll Brothers held a conference call for analysts to discuss its 2Q F05 results….[stating,] 'Demand for luxury homes remains strong….'"	Actual Return Finnerty Abnormal Return Finnerty Significance	-2.45% -0.64%	Statistically Insignificant Price Movement
5/24/05	"Rassman was interviewed on Bloomberg….[stating,] 'And now we're growing at what has been our traditional pace of growth, about 20% plus a year.'"	Actual Return Finnerty Abnormal Return Finnerty Significance	1.57% 1.46%	Statistically Insignificant Price Movement
5/26/05	"Toll Brothers issued a release reporting its results for 2Q F05….[stating,] '[W]e still believe net income will rise approximately 20% in FY 2006 over FY 2005.' Toll Brothers held a conference call for analysts to discuss its business and its 2Q F05 results….[stating,] '[E]ven with our increase in guidance for fiscal 2005, we can achieve approximately 20%....' Rassman appeared on CNBC to discuss Toll Brothers' business….[stating,] 'Home building looks terrific and the demographics seem to point to continued strength in our area.'"	Actual Return Finnerty Abnormal Return Finnerty Significance	6.91% 2.72% *	Confounding News (Earnings Announcement)
6/1/05	"Robert Toll appeared on *Nightly Business Report….* [stating,] 'I think [Toll Brother's stock is] just fabulous…a tremendous buy.'"	Actual Return Finnerty Abnormal Return Finnerty Significance	2.71% 0.94%	No "Significant News"; Statistically Insignificant Price Movement
6/9/05	"Toll Brothers issued a release announcing a 2 for 1 stock split which stated: '[T]he Company expects net income to increase… approximately 20% in FY 2006 over FY 2005.'"	Actual Return Finnerty Abnormal Return Finnerty Significance	2.34% 1.04%	Statistically Insignificant Price Movement
6/14/05	"Robert Toll appeared on CNBC...to discuss Toll Brothers' business….[stating,] 'There is no abatement [in demand] as of this meeting between us…. As strong as it's ever been.'"	Actual Return Finnerty Abnormal Return Finnerty Significance	1.88% 0.20%	No "Significant News"; Statistically Insignificant Price Movement
6/16/05	"Rassman was quoted in the *Chicago Tribune* : 'We've sold out into the second quarter of next year.'"	Actual Return Finnerty Abnormal Return Finnerty Significance	2.47% 1.27%	Statistically Insignificant Price Movement

Exhibit 4

Toll Brothers, Inc.
Finnerty Regression Results on Alleged Misrepresentation Dates

Source: Amended Complaint; Declaration of John D. Finnerty

Date	Description of Alleged Event from Amended Complaint		Finnerty Regression Result [1]	Reason for Lack of Evidence of Inflation [2]
7/27/05	"Rassman appeared on *CNBC* to discuss Toll Brothers' business….[stating,] '[W]e don't currently see any indications on a national basis that that's happening, either slowdown in regulation or a change in the balance between supply and demand.'"	Actual Return Finnerty Abnormal Return Finnerty Significance	-0.55% -1.77% *	Statistically Significant Negative Price Movement
7/28/05	"Rassman was interviewed on Bloomberg….[stating,] '[W]e don't see any let-up in terms of demand or our ability to produce profits.'"	Actual Return Finnerty Abnormal Return Finnerty Significance	4.19% 1.41%	Statistically Insignificant Price Movement
8/16/05	"Robert Toll appeared on *CNBC* to discuss Toll Brothers' business….[stating,] 'The market is fantastic…. The supply is just out of balance with demand.'"	Actual Return Finnerty Abnormal Return Finnerty Significance	-1.22% 0.04%	Statistically Insignificant Price Movement
9/8/05	"Toll Brothers filed its Form 10-Q…."	Actual Return Finnerty Abnormal Return Finnerty Significance	-3.23% -0.86%	No "Significant News"; Statistically Insignificant Price Movement
9/13/05	"Robert Toll appeared on *CNBC* to discuss Toll Brothers' business….[stating,] '[Y]ou still have terrific demand, but it's not ferocious as it was….'"	Actual Return Finnerty Abnormal Return Finnerty Significance	-1.07% -0.59%	No "Significant News"; Statistically Insignificant Price Movement
10/16/05 [3]	"*New York Times* contained an article about Toll Brothers that was based on an interview with Robert Toll….[stating,] 'The company expects to grow by 20 percent for the next two years and then will strive for 15 percent annually after that.'"	Actual Return Finnerty Abnormal Return Finnerty Significance	2.72% 2.11% *	No "Significant News"; Stale News

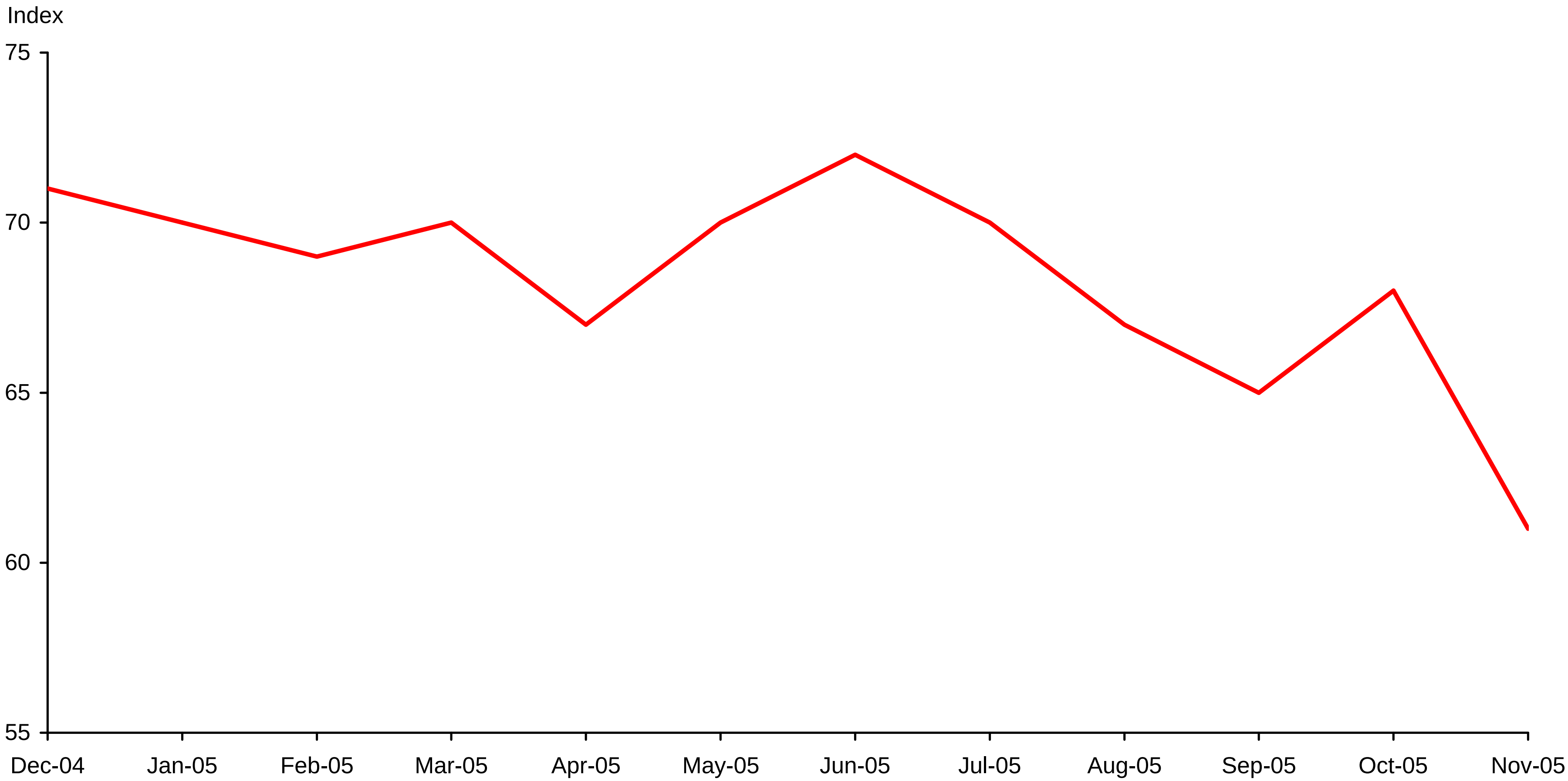
Note:

[1] Toll Brothers returns and regression results are from the Declaration of John D. Finnerty. "*" indicates significance at the 5% level.
[2] "Significant News" refers to news items identified as significant according to the Declaration of John D. Finnerty, Exhibit G.
[3] 10/16/05 was a Sunday. Therefore, returns and regression results are displayed for Monday, 10/17/05.

Exhibit 5

NAHB/Wells Fargo National Housing Market Index
December 2004 – November 2005

Source: National Association of Home Builders (NAHB)

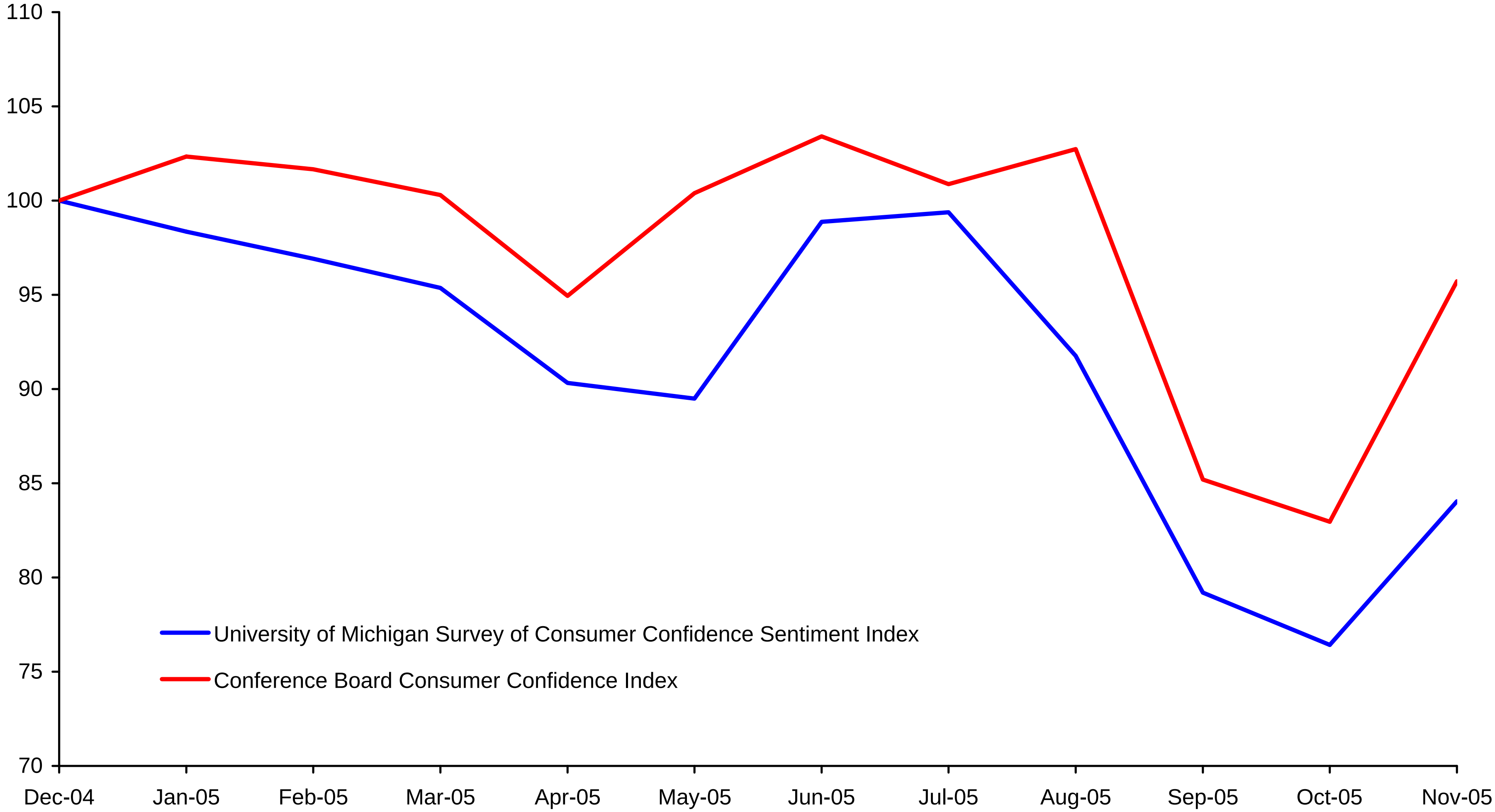


Note: Derived from a monthly survey that National Association of Home Builders (NAHB) has been conducting for more than 20 years, the NAHB/Wells Fargo Housing Market Index gauges builder perceptions of current single-family home sales and sales expectations for the next six months as “good,” “fair” or “poor.” The index puts seasonally adjusted builder perceptions and expectations on a scale ranging from 0 to 100.

Exhibit 6

Consumer Confidence Indices
December 2004 – November 2005

Source: Bloomberg



Note: Consumer confidence indices are pegged to 100 as of December 2004.